

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /350/1147/2018
M.A.350/860/2018
M.A.350/432/2019

Date of order : 5.7.19.

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

DIPAK BHATTACHARYA
VS.
UNION OF INDIA & ORS.
(EASTERN RAILWAY)

For the applicant : Mr. S.K. Dutta, counsel
Mr. B. Chatterjee, counsel

For the respondents : Mr. P. Bajpayee, counsel

Bidisha Banerjee, Judicial Member

The applicant in his second journey to this Tribunal has sought for the following reliefs:

"a) An order holding that the Directive in para 4 of the Railway Board's Circular dated 06.05.2016 to the effect that "however in such selections/panels initiated, where RPF/RPSF candidates are allowed for any reason, but not finalized till date shall cease to exist" is neither bonafide nor justified in as much as untenable and against the equity and justice;

b) An order directing the respondents/authorities concerned to rescind/recall the impugned order of cancellation dated 23.05.2016 and further directing to redraw the final result of written test dated 13.04.2016 by excluding the RPF/RPSF Personnel in respect of UR Category and giving effect to the result of the written test in respect of unreserved category and further directing them to finalize the selection as well as make promotions within a period as to this Hon'ble may seem fit and proper;

c) An order directing the respondent authorities to quash and set aside the fresh Selection Notice dated 27.05.2016 being No.E.1025/2/Misc./Law Asstt/Selection/Pt.IV;

d) To quash and set aside the Impugned Memorandum dated 17.07.2018 being No.E.1025/2/Misc./Law Asstt/Selection/Court Case Pt.I issued by Principal Chief Personnel Officer, Eastern Railway;

- e) An order directing the respondents to produce/cause production of all relevant records;
- f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. The prayer of the applicant has been turned down vide order dated 17.07.2018, impugned in the present O.A., that has been issued by the Principal Chief Personnel Officer, pursuant to the direction of this Tribunal in O.A.903/2016. The impugned order is set out hereunder with supplied emphasis for clarity:

"Eastern Railway
MEMORANDUM
No.E.1025/2/Misc/Law Asstt/Selection/Court Case Pt.I
Kolkata dated 17.07.2018

Hon'ble Central Administrative Tribunal, Calcutta vide order dated 19/04/2018 passed in OA No.350/903/2016, Dipak Bhattacharya Vs. U.O.I. & Ors. has directed to verify as to whether the present applicant is similar circumstanced to the applicants of OA818/2016 and if the present applicant is found similarly situated with the applicants in OA 818/2016, the similar benefits to be extended to the present applicant. Accordingly, the matter has been duly examined as per rules & facts of this case.

In brief, case is that this Railway notified and conducted selections of S& WI & CLA against departmental quota wherein some RPF staff were wrongly allowed to participate in the said departmental selections. However, in terms Railway Board's letter No.E(NG)I-2014/PMI/19 dated 06/05/2016, finding that the RPF personnel are not eligible to appear in such selections, the competent authority had cancelled the aforesaid selections. The applicants of OA 818/2016, who were qualified in written examination of S&WI approached the Ld. Tribunal against such cancellation & the Ld. Tribunal on observing that "none of the candidates belonging to RPF/RPSF have been selected against unreserved vacancies or even against reserved vacancies, directed to proceed further to finalize the panel for appointment to the post of S&WI in accordance with the recruitment rules"

The applicants of OA 818/2016 were connected with selection of S& WI and the present applicant is connected with selection of CLA.

The selection procedure of both the cadres is as under:

S&WI	CLA
50 marks for W/test, 30 marks for Scrutiny of SR/APAR Total—80 marks	35 marks for W/test 15 marks for Viva-Voce 30 marks for scrutiny of SR/APAR Total—80 marks

BB

On going through the above comparative chart, it is clear that in selection of CLA, there is an element viva-voce for assessment of professional ability apart from written examination and after aggregating the marks under the head of professional ability and service records/APARs, the final result is published whereas in the selection of S& WI, there is no such element of viva-voce test and after aggregating marks obtained in written examination & on the basis of service records/APARs, final result is published.

The details of the candidate who have qualified the written examination of S& WI & CLA selections are indicated below:-

No. of candidates qualified in written test	<u>S&WI</u>	<u>CLA</u>
	RPF = UR—Nil SC—06 ST—Nil Non-RPF = UR—04 SC—36 ST—Nil	RPF = UR—03 SC—02 ST—Nil Non-RPF = UR—04 SC—Nil ST—Nil
		Provisional as Viva-voce is not done

In OA-818/2016, Lt. Tribunal observed that "if things are there where the irregularities could be separated without affecting the merit list, the course adopted for cancellation of the process of selection in our opinion would not be proper course in view of judgment of Apex Court.

In the instant case of CLA, there are several RPF personnel who have qualified in the written examination who should appear for viva-voce test whereas in S&WI selection none of the personnel belonging to RPF had qualified against UR vacancies and there was no element of viva-voce test. A candidate who has merely secured the minimum qualifying marks in written examination but not qualified in the viva-voce test cannot be selected for the post of CLA as the selection procedure consists of both written test followed by viva-voce and scrutiny of SR & APARs.

In the facts and circumstances stated above it is clear that the selection procedure of S& WI and CLA is different and that as some RPF personnel have qualified in the written examination of CLA, as such there is no scope to separate the irregularities of selection without affecting the result of written examination.

In view of the above, in compliance with the order of the Hon'ble Tribunal in OA903/2016 it is found that the present applicant for the post of CLA is no way similarly situated with the applicants in OA 818/2016 for the post of S& WI to claim similar benefits. Hence the cancellation of the irregular notification for selections to the post of CLA vide order dated 23/05/2016 is in order and should hold good.

(Aruna Nayar)
Principal Chief Personnel Officer"

A bare perusal of the order impugned would demonstrate and exemplify that the respondents were, in the earlier round directed to verify whether Dipak Bhattacharya the applicant in O.A.903/2016 i.e.

the present applicant is similarly circumstanced to applicants in O.A.818 of 2016 and if found similarly situated with the applicants in OA 818/2016, the similar benefits to be extended to the present applicant.

4. The authorities have drawn a comparison and fished out the following dissimilarities between the two applicants, the present applicant vis-à-vis applicants in O.A.818 of 2016:-

- (i) The applicant was aspirant to the post of CLA whereas applicants in O.A.818/2016 were aspirants to S&WI;
- (ii) Although in both the selections RPF personnel were wrongly allowed to participate and were short listed in the Staff and Welfare Inspector(S&WI) selection(O.A.818/2016), none of the RPF cleared written test due to which Tribunal in O.A.818/2016 had directed segregation whereas in Chief Law Assistant(CLA) RPF cleared written test, therefore, segregation is not possible.

5. In order to examine whether the dissimilarities were correctly pointed out, we need to closely examine the order passed in O.A.818/2016. The order passed in O.A.No.818/2016 is, therefore, extracted hereunder, but to the extent found relevant and germane to the present lis:-

"2. The applicants four in number had participated against a notification dated 18.6.15 for formation of panel of seven (07) posts of Staff & Welfare Inspector in PB-2 with Grade Pay -Rs.4200/- for Headquarters Unit against the following break up of posts—UR-06, SC-01 and ST-Nil, as against 35% to general selection from all departments. After going through the rigours of the selection process comprising of written test etc. they were enlisted as qualified in written test held on 24.1.16 vide order dated 5.4.16. Their service records and APAR/Work Reports were called for, for early finalisation of the selection.

Unfortunately on 6.5.16 the Railway Board issued an order whereby and where under, for having allowed the RPF/RPSF personnel to appear in the said selection, a decision was taken that selections/panels where RPF/RPSF were allowed for any reason but not finalised till date would cease to exist and accordingly on 23.05.16 the selection was treated as cancelled.

Further on 1.6.16 as would be evident from a supplementary affidavit further selection notice was issued expressly debarring RPF/RPSF personnel to appear in the selection.

3. The applicants having already qualified in the written test against UR vacancies, have challenged the Board's circular dated 6.5.16, the cancellation order dated 23.5.16 and have sought for a stay on the fresh notification dated 1.6.16 on the ground that since RPF/RPSF personnel were wrongly allowed by the administration to participate despite having full knowledge of a Board's order dated 11.8.03 expressly debarring such personnel in GDCE and any other departmental selections, in absence of any fault on the part of the present applicants who stood already selection, the authorities ought to have segregated such ineligible RPF/RPSF personnel and proceed with the written test result.

4. In support of their contention *Id.* Counsel for the applicants relied upon a decision rendered by the Hon'ble Apex Court in *Indrapreet Singh Kahlon & Ors. -vs-State of Punjab & Ors.* [(2006)11 SCC 356] wherein in a case where a selection process was tainted with the vices of malafide at the behest of the Chairman, Punjab Public Service Commission, the Hon'ble Apex Court held that

"the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, was it an impossible task."

and that

"Honest candidates should not be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate..."

7. Learned counsel for the respondents relying upon the judgment of the Hon'ble Apex Court in *East Coast Railway and another vs. Mahadev Appa Rao and others*, (2010)7 SCC 678 would submit that a candidate seeking appointment to a civil post have acquired no indefeasible right to be appointed against such post merely because his name appeared in the merit list of the candidates for such post.

8. xxx. The undisputed facts are that all the four applicants found place in the merit list and they appeared in the selection in pursuance of an advertisement and have been declared successful in the written examination against the 7 unreserved vacancies for the post of Staff & Welfare Inspector. It is also undisputed fact that none other than applicants in this process of selection meets the requirements of getting qualifying marks. Even for the unreserved category post a list has been published under heading "best among all failed candidates." And among the failed candidates there are some personnel belonging to RPF.

9. In view of the aforesaid admitted fact, we have to see whether the order of cancellation would be proper in this case or not? It is true that merely the applicants declared successful in the selection they have no right to be appointed against a post for which they have been selected and merely because their names appeared in the merit list. But at the same time the State does not enjoy an unqualified prerogative to refuse an employment in a arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list. The validity of the State's decision not to make appointment is

thus a matter which is not beyond judicial review before the competent court including this Tribunal.

xx

If the things are that where the irregularities could be separated without affecting the merit list the course adopted for cancellation of the process of selection in our opinion would not be a proper course in view of the above judgment of the Hon'ble Apex Court in given set of circumstances.

xx

Hence we are of the view that the respondents have not applied his mind while cancelling the selection process and accordingly all these applications deserve to be allowed.

10. Accordingly, the impugned order of cancellation dated 23.5.2016 of selection process for recruitment of Staff & Welfare Inspector in PB-2 with Grade Pay-Rs.4200/- for Headquarters Unit and further selection notice issued by the respondents for recruitment for the same posts are hereby set aside. The respondents are directed to proceed further to finalise the panel for appointment to the post of Staff & Welfare Inspector in accordance with the recruitment rules forthwith in pursuance of selection process initiated against a notification dated 18.6.15. The whole exercise should be completed by the respondents within 3 months from the date of production of the certified copy of this order.

11. "In the result, all the OAs are allowed. However, there will be no order as to costs."

6. We note the following similarities in the two selections i.e. S& W.I(O.A.818/2016) and CLA as evident from the impugned order and the order passed in O.A.No.818 of 2016, extracted supra.

(i) Both the posts S&W.I and CLA belong to general line of promotion and does not fall in the avenue of promotion available to the RPF. The RPF have their own channel of promotion from Constable to Sr. Constable, Head Constable, Assistant Sub Inspector etc., yet they were allowed to participate.

(ii) Both the selections of S& W.I(O.A.818/2016)and CLA(Present O.A) were , therefore, wrongly held, inasmuch as RPF personnel who had their own avenue of promotion were allowed to

participate ignoring Board's letter dated 11.8.2003(as noted in O.A.818/2016 order) and were declared successful in written examination, therefore, both the selections were identically tainted with the vices of malafide and arbitrary action;

(iii) Although no element of viva voce exists in S& W.I. selection,in both the selections RPF personnel who had no right to appear were declared as qualified in written exam, depicted in the following manner in impugned order:-

No. candidates qualified written test in	S&WI	CLA
	RPF = UR - Nil SC - 06 ST - Nil Non-RPF = UR - 04 SC - 36 ST - Nil	RPF = UR - 03 SC - 02 ST - Nil Non-RPF = UR - 04 SC - Nil ST - Nil Provisional as Viva-voce is not done 22
30		

(iv) In the selection of CLA, there is an element viva-voce for assessment of professional ability apart from written examination and after aggregating the marks under the head of professional ability and service records/APARs, the final result is published whereas in the selection of S&WI, there is no such element of viva-voce test and after aggregating marks obtained in written examination & on the basis of service records/APARs, final result is published but in both the selections only written examinations were held and written examination's result was published. The respondents were yet to declare the final result

88

on the basis of the next stages. Therefore both the selections had proceeded upto the stage of written examination only.

Having examined the matter threadbare, we are of the considered opinion that if the selection covered by O.A.818/2016 can be allowed to proceed segregating the RPF, there is no reason the present selection of CLA cannot be allowed to proceed in the same manner.

7. It is learnt that the RPF personnel who have been so segregated have not agitated against the order passed in O.A.818/2016 i.e. their segregation.
8. In the aforesaid backdrop we allow the present selection for CLA to be concluded logically in accordance with law segregating the RPF from the written tests result and after publishing a fresh written test result, conducting viva-voce etc. as are required to be conducted in terms of the prescribed selection procedure.
9. The entire exercise be completed by 4 months.
10. Accordingly we dispose of the O.A. With this order M.As also stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member