

**22.03.2022**  
**Sl. No.14**  
(PP)

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**WPA 3167 of 2022**

**Somnath Banerjee**  
**Vs.**  
**Union of India & Ors.**

Mr. Sabyasachi Chatterjee,  
Mr. Sandipan Das,  
Mr. Akashdeep Mukherjee,  
Mr. A. Sharma,  
Mr. Sayan Banerjee

.... For the petitioner.

Mr. Ranjan Kumar Sinha

... For the respondents.

The petitioner claims to be suffering from locomotor disability, which is also referred to as Cerebral Palsy. The petitioner says that the Staff Selection Commission (in short, SSC) issued an advertisement for filling up the vacancies for various posts through Combined Graduate Level Examination, 2018 (in short CGLE, 2018). The petitioner, having qualified in all three stages of the examination, went for document verification on 28<sup>th</sup> January, 2021 at the Eastern Region Office of SSC and wanted to give preference in sequential manner for vacancies arising out of 12 posts as enumerated in paragraph 5 of the writ petition. The petitioner says that the Verifying Officer started filling up the posts for which preference was given by the petitioner in

online mode. In that process only the vacancies in respect of the post of Auditor in Controller General in Defence Accounts was taken to be the preferential post in the online system. The petitioner's case is that the Verifying Officer informed him that the petitioner can apply for vacancies against only one post and no other. The petitioner says that the petitioner was entitled to be considered against vacancies in respect of several other posts, but in gross violation of the provisions of the Right of Persons with Disabilities Act 2016, the petitioner was not permitted to such option. The petitioner challenged the action on the part of SSC before the Court of Chief Commissioner of Persons with Disabilities "Divyangjan". The Commission by an order dated 20<sup>th</sup> December, 2021 has recommended SSC to do the needful in its online application mode so that candidates with Cerebral Palsy are not denied their legitimate rights in applying to the post identified as per Notification No.38-16/2020-DD-III dated 4<sup>th</sup> January, 2021 published by the Ministry of Social Justice and Empowerment. The petitioner alleges that the recommendation has not been carried out by SSC and has, therefor, approached before this Court by filing the instant writ petition for a direction to give the petitioner appointment in an appropriate department under

appropriate category considering the memo dated 1<sup>st</sup> April, 2021 (appearing at page 31 of the writ petition). In particular, the petitioner says that he was entitled to be considered for the posts under Post Code D39(OH), D41(OH), D42(OH), D44 (OH), D46 (OH) and D52(OH), as contained in the said documents, but has been wrongfully deprived.

On behalf of the respondents, it is submitted that before the Commission, the respondent/SSC had categorically said that SSC decided that as per the provisions of the Notice of Examination of CGL Examination, 2018 suitability of posts under the said examination for various disabilities and categories under the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as the said Act), may be determined from the information given by the User Departments of CGL Examination, 2020, which are duly incorporated in the Notice of CGL Examination, 2020 and subsequent corrigendum issued for the said examination. On such steps being taken, the recommendation made by the Commission has been taken note of by including the candidates with Cerebral Palsy against Post Code B06, B07, D34. This, in effect, redresses the grievances of the petitioner. In respect of Post Code B06 and B07, it is required to qualify in the computer proficiency test (in

shot CPT). The petitioner did not appear in the CPT, and as such he was found not eligible to be considered for the Post Code B06 and B07. The only post which was left was Post Code D34. The petitioner was, therefor, considered against Post Code D34 only, and there was no wrongful act or action on the part of the SSC. In respect of Post Code D34, the last selected candidate has obtained higher marks than that of the petitioner. The last selected candidate has obtained 445.5711 marks, whereas the petitioner has obtained only 439.01043. It is further submitted by the respondents that by the time the order dated 20<sup>th</sup> December, 2021 reached the respondents, the entire vacancies declared under CGL Examination, 2018 were filled up, and as such the question of considering the petitioner any further cannot and does not arise. The entire selection process, according to the respondents, was over by 1<sup>st</sup> April, 2021. That apart and in any event, the recommendation made by the Chief Commissioner was complied and carried out in substance even before the recommendation was actually made.

After considering the provisions of the said Act, I find that under the provisions of Section 76, the recommendation from the Court of the Chief Commissioner to an authority can either be accepted

or can also be not accepted. In either case, the action taken within three months from the date of receipt of the recommendation is required to be made known to the Chief Commissioner. In the event the authority does not accept the recommendation, it shall have to convey the reasons for non-acceptance to the Chief Commissioner as also the aggrieved persons within the said period of three months. Since the entire procedure under CGL Examination, 2018 is over, even assuming without admitting that the petitioner has suffered an injury on having not been considered in respect of the Post Code D39(OH), D41(OH), D42(OH), D44 (OH), D46 (OH) and D52(OH), then also no fruitful purpose will be served as no further vacancies are available under the Cerebral Palsy category to give appointment to the petitioner.

The matter will, therefor, be of academic interest even if it is heard after exchange of affidavits.

In the aforesaid facts and circumstances, the writ petition is disposed of directing SSC to convey to the Chief Commissioner as to the steps taken pursuant to the recommendation made by the Court of Chief Commissioner, vide its order dated 20<sup>th</sup> December, 2021, within a period of three months from date. This also required to apprise the

Commissioner as the present status so that there is no anomalous situation created out of this in future.

Nothing further remains to be adjudicated in this writ petition. Since other issues have already been resolved, the writ petition is accordingly disposed of without any order as to costs.

Parties are directed to act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**(Arindam Mukherjee, J.)**