

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

W.P.C.T 82 OF 2022

Union of India & Anr.

Vs.

Sabita Halder

Appearance:

For the Petitioners/UOI : **Mr. Siddhartha Lahiri, Adv.**
Mr. Debraj Dutta, Adv.

Judgment On : **23.12.2022**

PRASENJIT BISWAS, J.:

The instant application is preferred against the order dated. 14.12.2021 passed by the Central Administrative Tribunal in O.A. No. 350/01837/2018.

Whereby and whereunder the petitioners/authorities are directed to

appoint the respondent in an existing vacancy in similar/commensurate post for Visually Handicapped candidates or she should be appointed in the next available vacancy in such post against the VH quota.

The background facts are that the Respondent participated in a written examination conducted by the Railway Authorities on 06.05.2007 for the post in Group C category and received a call letter from the Divisional Railway Manager, Eastern Railway, Howrah on 22.06.2007 for verification of her testimonials. She reported on the schedule date and completed the verification process. On 03.07.2001 the respondent faced a brutal attack by the miscreant resulting loss of her eyesight and left her traumatized.

During second part of the 2017 this respondent came to know that the panel in which her name was included had been abolished. She preferred application under the provision of the RTI Act but did not get any satisfactory answers. The respondent in the circumstances having no other remedy to agitate her grievance has been constrained to file an application before the tribunal for getting proper relief.

We have considered the rival submissions advanced by both the sides. Perused the impugned order.

It appears from the materials on record that the Respondent participated in the written examination conducted by the Railway Authority for filling up the vacancies in Gr. C and Gr. D post against Physically Handicapped Quota and qualified in the said written examination securing 4th position in the merit list of VH candidates. The

respondent was directed to appear for verification of testimonials which she duly attended.

It is undisputed that two vacancies were kept reserved for Visually Handicapped candidates. Out of 5 nos. shortlisted Visually Handicapped candidates 04 nos. candidates including this respondent were present in the screening test held on 13.07.2007. As per recommendation of the recruitment committee a panel of 2 nos. of visually handicapped candidates whose names stand in Sl. nos. 2 and 3 was published. Those 2 empanelled candidates did not join but the respondent was not called for medical examination although she secured 4th position in the merit list.

This respondent was the next candidate on merit, so she should have been included as the top most candidate in the replacement panel. The right of the respondent to be appointed against the post to which she has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect, but on the erroneous decision of the appellant. No reasonable explanation has been given by the appellant in respect of depriving the respondent from her legitimate entitlement to an employment earned through examination. It is clear to us that the empanelled candidate had failed to join within a stipulated time despite that this respondent who was the immediately next successful candidate was not offered to offer of appointment to the post. The respondent having been duly selected for the post in question and being illegally

kept out of the appointment on account of the so-called decision of this screening committee.

We have no hesitation to hold that act of the petitioner authority in non-considering the appointment of the respondent in the Gr. C post under Visually Handicapped quota is vitiated by lack of transparency and liable to be struck down.

In order to do substantial justice to a litigant this Court should take every possible step. The respondent cannot suffer injustice due to expiry of the life of the panel and therefore, it cannot be said that she waived her right. Accordingly, we are of the view that the respondent's right to be appointed to the post has been illegally taken away by the petitioner.

In view of the above this Court is of the view that the Tribunal, in the impugned order, was perfectly justified and there is absolute no legal infirmity in the order.

The petition is accordingly dismissed.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)