

**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. 4 of 2022

**Anindyam Bhattacharjee
Vs.
Union of India & Ors.**

With

**W.P.C.T. 97 of 2021
Union of India & Ors.
Vs.
Anurag Tripathy**

Appearance:

For the Petitioner	:	Mr. Soumya Majumder, Adv.
(W.P.C.T 4 of 2022)		Ms. Sanjukta Dutta, Adv.
		Ms. Shagun Baid, Adv.

For the UOI	:	Mr. Siddhartha Lahiri, Adv.
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For the Private Respondent	:	Mr. Surajit Samanta, Adv.
		Mr. Biswajit Samanta, Adv.
		Mr. Debojit Samanta, Adv.
		Ms. Sohini Samanta, Adv.

Judgment On	:	11.01.2023
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PRASENJIT BISWAS, J.:

The present petition is preferred by the petitioner challenging the impugned order dated 16.09.2021 passed by the Central Administrative Tribunal in O.A No.350/01892/2018 with M.A. No.350/00562/2020, whereby and whereunder the tribunal directed the Railway Authority to confirm the selection of the Respondent No.4 while finalizing the empanelment of Group-B panel of the post of ACM/ACO maintaining his inter se merit position and without going to further written examination or viva voce.

Briefly stated, the facts giving rise to the present petition are as follows:

The South Eastern Railway initiated a recruitment process for filling up the post of Assistant Commercial Manager/Assistant Claims Officer through Limited Departmental Competitive Examination. The Respondent No.4 appeared in the said written examination and scored highest marks and also appeared in the viva voce but the result could not be published on account of procedural irregularities. Ultimately the entire selection process was cancelled by the Authority. Finding no other alternative this respondent filed an application before the tribunal being O.A 350/1522/2017 challenging cancellation of the said selection process.

The Tribunal passed the following order dated 25.09.2018 *inter alia* that-

“Hence, with the consent of the parties, we hereby direct the competent respondent authority to consider the case of the applicant, if otherwise qualified for selection. The respondent, however, are at liberty to proceed against the candidate allegedly guilty of procedural irregularity and reserve certain posts subject to outcome of such inquiry/investigation against the allegedly delinquent candidate.

If the applicant and other similarly placed candidates are free from any allegations and if they qualify on merit and as per Rules, the competent respondent authorities may like to confirm their selection as per law within a period of 16 weeks from the date of receipt of a copy of this order.”

Despite order of the tribunal the Respondent Authority notified fresh empanelment process on 08.10.2018 followed by a further notification on 04.12.2018 containing two eligibility lists for participation in the selection process.

It is submitted on behalf of the petitioner Anurag Tripathy that the authorities cancelled the earlier selection process and he appeared in the subsequent selection process under the accelerated promotion examination initiated in the year 2018. The participation and consideration of the respondent no.4 in the earlier examination was found to be flawed due to his irregular marks of ACRs. The Tribunal disposed of O.A No.1892 of 2018 filed by the respondent no.4 granting leave to the Authority to fill up the vacant post and to confirm the selection of the respondent no.4 with the

marks earlier obtained by him in the written examination and viva voce. It is further submitted on behalf of the petitioner that the Tribunal contradicted itself in the various orders on the basis of the application filed by the respondent no.4 and if the selection of this respondent is allowed to carry forward till the stage of the appointment to the post against the quota for accelerated promotion, then there will be miscarriage of justice and fraud in selection process.

It is further submitted on behalf of the petitioner that the Tribunal did not take into consideration the ACRs of the respondent no.4 in the selection process held in the year 2016 and his ACRs had been upgraded at the reporting stage allegedly by his one close relative by rewriting the same afresh for the sole purpose of giving benefit to him. The Charge Sheet had been issued to this respondent no.4 for adopting unfair means in the selection process and the major penalty order has been issued to him and his relative by the authority.

Learned Counsel further assailed that petitioner was not a party before the Tribunal in any of the application filed by the respondent no.4 and in fact, he was not aware of the carriage of proceedings till substantially a long period of time.

Learned Advocate referred a decision of Hon'ble Apex Court passed in ***Reshma Sultana vs. State of Karnataka, reported in 2022 SCC OnLine 586*** in this context and submitted that as the entire selection process was found to be vitiated due to fraud; so there is no irregularity in subsequent/fresh notification which was published after following the due process or selection as required.

Learned Counsel for the Authority assailed before us that the administration cancelled this selection process in its midway when certain unambiguous irregularities were surfaced for the sake of transparency and propriety. So, the candidates do not have any stand, since the selection was not finalized and the panel was not published. It is the further submission of the learned counsel that the administration has full rights to cancel the selection in an intermediate stage to hold it afresh, if certain wrongdoings are perceived.

It is submitted on behalf of the authority that the private respondent was subjected to a major penalty charge memorandum under the Railways Servants (D and A) Rules, 1968 for allegedly concealing the facts that the official who initiated his ACRs for the relevant period was related to him. As per submission of the learned Counsel, the Tribunal ought to have considered that there were serious irregularities which were noticed by the DPC in the ACR of the private respondent for which the entire selection process was cancelled to maintain the fairness and transparency in the selection procedure as the authority wanted to maintain a clean, unblemished, unbiased and fair image. So, the authority never committed any illegality or irregularity while cancelling the selection procedure which the tribunal ought to have kept in their mind while passing the impugned order.

Mr. Samanta, learned Advocate appearing on behalf of the private respondent submitted that the evaluation of the performance of his client for the year 2016-17 was done by an independent authority not related to the respondent no.4 and assessed as outstanding. It is further submitted

by the learned Counsel that his client appeared in the selection process and scored highest mark in the written examination and also appeared in the viva voce but the result could not be published on account of alleged allegations of irregularities in his ACRs/ APRs. Being denied of his legitimate expectation of empanelment to the Group-B Panel of ACM/ACO he knocked the door of the tribunal who passed the impugned order rightly. Instead of complying the direction passed by the tribunal the authority notified a fresh empanelment process on 08.10.2018 followed by a further notification dated 04.12.2018 which carries irregularities and illegalities.

Undoubtedly when an order is under challenge, it is permissible to go behind the form and to ascertain about the true nature and character of the same. We are not unmindful about the fact that it is responsibility of the Reporting Officer to take reasonable care to disregard all subjective considerations and bias that he may have one way or the other, while preparing the annual confidential report of the Government employee. It is for this reason that the report is required to be reviewed by the Reviewing Officer. Further, responsibility of the Reviewing Officer would be to ensure that quality of reporting is such as to give a complete account of person's character and work covering bad as well as good points. A Reviewing Officer has to correct the conscious or unconscious bias that may be there in the assessment given by the reporting officer, particularly when any defect remarks have been made.

Keeping in mind the rival contentions of the parties, the Annual Confidential Reports of the Respondent No.4 were called and perused by

us. The names and designations of the Reporting, Reviewing and Accepting Officers who graded the private respondent as under: -

Year	Reporting Officer	Reviewing Officer	Accepting Officer
2012-13	Rajiv Kumar Sharma, DYCCM (SPL)	Rajiv Kumar Sharma, (Dy. CCM, Spl)	Ajay Shankar Jha Chief Commercial Manager, PS/CATG)
2013-14	Jahar Basu, (DYCCM, REF and VTS)	Rajiv Kumar Sharma, (Dy. CCM, Spl)	Satyaki Nath (Chief Commercial Manager, FM)
2014-15	Rajiv Kumar Sharma (DYCCM, SPL)	Rajiv Kumar Sharma, (Dy. CCM, Spl)	Ajay Shankar Jha, (Chief Commercial Manager, PS/CATG)
2015-16	Rajiv Kumar Sharma (DYCCM, SPL)	Rajiv Kumar Sharma, (Dy. CCM, Spl)	Satyaki Nath, (Chief Commercial Manager, FM)
2016-17	Somnath Sanyal (Dy. CCM/PS)	Ajay Shankar Jha, (Chief Commercial Manager, PS/CATG)	Ajay Shankar Jha (Chief Commercial Manager, PS/CATG)

A bare glance at the gradings of the private respondent in his Annual Confidential Reports for the preceding four years were throughout 'Outstanding',

From the ACRs of the Respondent No.4, it is clear and apparent that the Respondent no.4 was given uniform outstanding grading in his confidential reports by both the initiating officer as also by the reviewing officer for the years 2012-13, 2013-14, 2014-15 and 2015-16. In the last report (2016--2017), the private respondent has also been rated 'Outstanding' where the said Rajiv Kumar Sharma was nowhere in the picture. At the time of grading of ACR of the Respondent No.4 for the year 2012-13, 2013-14, 2004-14 and 2015-16 the alleged Rajiv Sharma was either Reporting Officer or Reviewing officer but ultimately it was accepted by the Accepting Officer by putting his signature therein who by designation is the Chief Commercial Manager.

The entire dispute hovers around the reviewing the ACR of the Respondent No.4 by his close relative including biasness, nepotism and favouritism which led to scrapping of the entire selection process initiated in the year 2016. Railways Authority decided to cancel this selection process and published a further notification. An application was taken out by the Authority during pendency of the tribunal application and on 17.07.2019 an interim order was passed by the Tribunal giving liberty to the authority to proceed with the filling up the post in terms of latter notification published keeping one post vacant. No allegation has been put by any one regarding marks obtained by the respondent in written examination and viva voce but such dispute travels on the circumference of

reviewing of the ACR of the respondent no.4. There is nothing in record to show that Shri Rajiv Kumar Sharma was in anyway involved in the selection process or earlier selection process was held contravening the selection rule. It is evident from the materials on record that the respondent no.4 secured highest marks in the written examination and admittedly qualified in the selection process.

Pursuant to the direction passed by this Court dated 10.08.2022 the Principal Chief Commercial Manager, South- Eastern Railway submitted report in respect of entire evaluation of performance of the Respondent No.4 which held as under:

YEAR	REVIEWED GRADING
2012-13	Very Good
2013-14	Average
2014-15	Average
2015-16	Average
2016-17	Good

From the aforesaid report it appears that the gradings of the private respondent for the year 2012-13 and 2016-17 are Very Good and Good respectively and gradings for the rest of the year is Average. We are unable to find any reason assigned in that report which led the Authority to give such remark about the performance of the respondent. All that we wish to say that we are distressed to find that the reviewed gradings in respect of the respondent no.4 as submitted in this report

cannot be sustained as it has been done without application of mind. We are of the opinion that selection committee was required to take into consideration only those ACRs/APRs which were conveyed to them while adjudging his suitability. The private respondent no.4 was denied the benefit of ACR/APR by the selection committee on the ground that it was graded by his alleged relations. We are of the view that the private respondent could not have been denied ACR/APR benefit at the time of selection process which have been graded earlier and accepted by the Accepting Office. When the concerned employees had an impeccable record of service sudden adverse entry made against him should be on cogent material. The doubt should of such a nature, as would reasonably and consciously be entertainable by a reasonable man on the given material. The reviewed grading as mentioned in the report granted to the Respondent No.4 should not be taken into consideration for being considered for promotion to the higher grade.

In our view, on the basis of the entries made in the Annual Confidential Reports of the respondent no.4, no reasonable person could form an opinion that his work and conduct was unsatisfactory. If the competent authority had taken trouble to go through the record of the petitioner, it could not have been possible for it to throw him out.

We, therefore, find no reason to quash the impugned order dated 16.09.2021 passed by the tribunal.

The Writ petition is, accordingly, dismissed.

No order as to cost.

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.)