

WP.CT. 446 of 2012
(Tanmoy Samanta. Vs. The Union of India & Ors.)
with
IA No. CAN 1 of 2016 (Old CAN 6500/2016)
with
IA No. CAN 2 OF 2023

Mr. Tara Pada Das

Mr. Puspam Das

.... For the Petitioner.

Mr. Sanjit Kumar Ghosh

.... For the BSNL.

Affidavit-of-service filed by the petitioner be kept on record.

The present writ petition has been preferred challenging an order dated 2nd February, 2012 passed in the original application being O. A. 1214/2011.

Record reveals that the writ petition was filed on 13th December, 2012. Thereafter the matter appeared before a coordinate Bench of this Court on 4th January, 2013. As no one appeared on behalf of the petitioner the writ petition was dismissed. The petitioner thereafter filed a restoration application on 1st July, 2016. Subsequently, an application under section 5 of the Limitation Act was filed in connection with the restoration application on 18th August, 2023.

As we have invited Mr. Das, learned advocate appearing for the petitioner to advance his argument on merits of the matter, the delay in preferring the restoration application is condoned and the order dated 4th January, 2013 is recalled. The writ petition is

restored to its original file and number and is taken up for final hearing with the consent of the parties. The applications being CAN 1 of 2016 (Old CAN 6500 of 2016) and CAN 2 of 2023 are disposed of.

Mr. Das submits that the petitioner participated in a selection process for appointment to the post of Telecom Technical Assistant in the district of Bankura as an unreserved category candidate. Though the petitioner, upon competing with the contesting candidates, emerged to be successful, he was illegally placed in a waiting list.

According to Mr. Das, there were five vacancies in total, out of which two vacancies were under unreserved category and three under reserved category (two for OBC and one for SC). The respondents illegally filled up one of the unreserved category vacancies appointing an OBC category candidate, namely, Amit Kr. Singha and the petitioner was ousted from the zone of appointment though he was a successful unreserved category candidate. The said issue, as urged, was glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Ghosh, learned advocate appearing for the respondents submits that an OBC category candidate in the said selection process, namely, Amit Kr. Singha was appointed in an unreserved category vacancy since he secured more marks than the petitioner.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

From the document annexed at page 24 of the writ petition it appears that the petitioner obtained 81.5 marks. Amit Kr. Singha, an OBC category candidate secured 84.5 marks, as would be explicit from the document annexed at page 34 of the writ petition. A reserved category candidate securing more marks than an unreserved category candidate can be considered in respect of an unreserved category vacancy. Admittedly, Amit Kr. Singha secured higher marks than the petitioner and was accordingly appointed. The panel was prepared way back in the year 2009 and the original application was filed in the year 2011. It is also well settled that mere empanelment does not confer any indefeasible right towards appointment.

In the said conspectus, the learned Tribunal rightly did not exercise discretion in favor of the petitioner and the said order does not suffer from any patent error of law warranting interference of this Court.

Accordingly, the writ petition being WPCT 446 of 2012 is dismissed.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(V.M. Velumani, J.)

(Tapabrata Chakraborty, J.)