

WP.CT 457 of 2013
With
IA No. CAN 1 of 2019 (Old No. CAN 4927 of 2019)

Alok Kumar De Ray
vs
Union of India & Ors.

Ms. Puja Beriwal
Mr. Sovan Bera

..... For the Petitioner.

Mr. Sovan Mukherjee

..... For the Respondent.

The present writ petition has been preferred challenging an order dated 11th September, 2013 passed by the learned Tribunal in the original application, being O. A. No. 1062 of 2012. By the said order the learned Tribunal dismissed the original application upon arriving at a finding that the successful candidates being the private respondents secured higher marks than the petitioner, namely, Alok Kumar De-Ray (in short, Alok) in the written examination conducted for filling up the advertised vacancies.

Ms. Beriwal, learned advocate appearing for the petitioner submits that the petitioner was appointed as a Khalasi on 5th June, 1985 and was promoted to the post of Technician Gr. I on 17th August 2002. A notification was issued on 27th November, 2011 for filling up eight vacancies (UR-6, SC- 01 and ST- 01) in the post of JE Gr.II. The petitioner exercised option to participate and after successful completion of training, Alok appeared in

the written examination. He was a SC candidate and there was only one SC vacancy specified for the group Paint and Trimming. The said vacancy was illegally filled up depriving the petitioner of his right to be appointed in the reserved post.

She argues that the results were not published by the authorities and Alok was kept in the dark as regards the marks he had obtained in the written examination. Thereafter, a memo dated 14th November, 2012 was issued wherefrom Alok came to learn that the private respondents have been promoted. Challenging *inter alia* the said memo, Alok preferred the original application. In the reply filed by the respondents, it was disclosed that Alok had secured 47 marks and the cut-off was 60 marks. In response to an application under the Right to Information Act, 2005, Alok was shown the answer script of the written examination.

She contains that the total marks allotted for the question nos. 7, 10 and 18 was fourteen and half. Alok's alleged deficit was of 13 (60-47) marks. The answers in respect of the said questions were not properly evaluated. Had there been proper evaluation of the answers, Alok would have come within the zone of consideration. Such arguments, as advanced were glossed over by the learned Tribunal and such infirmity warrants interference of this Court.

The present writ petition was admitted for hearing by this Court and the parties were directing to exchange their affidavits. Pursuant thereto, the affidavit-in-opposition was been filed by the respondents annexing the answer script of the petitioner.

Drawing our attention to pages 13 to 29 of the said affidavit, Ms. Beriwal submits that Alok's answer script was not appropriately marked and his answers were not evaluated properly.

Mr. Mukherjee, learned advocate appearing for the respondents denies and disputes the contention of Alok and submits that the written examination results were published. The cut-off mark was 60. However, Alok secured only 47 marks. The private respondents admittedly secured more marks than Alok.

He argues that there exists no regulation permitting re-evaluation of the answers and no legal right of Alok had been infringed and as such the original application was rightly rejected.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that the notification dated 27th November, 2011 was in reference to filling up of six posts under unreserved category, one post under SC category and one post under ST category in four groups. The private respondent no. 6, namely, T. Mutyalu, though an SC

candidate, upon successfully competing with general candidates got selected against post of unreserved candidates, as per the Railway rules. The learned Tribunal had also observed that the cut-off marks set was 60 (sixty) and Alok secured only 47 (forty-seven) marks much less than the marks obtained by the private respondents. In view thereof, Alok did not come within the zone of consideration.

Answering our query, Ms. Beriwal submits that the total marks in question nos. 7, 10 and 18 was fourteen and half. The answer script reveals that he was given 2 marks in question no.10 and as such he still could not have reached the cut-off marks. Furthermore, there was no provision towards re-evaluation of the answers.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the writ petition and connected application, if any, are dismissed.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)