

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present :

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**FMA 530 of 2020
Sujit Halder
Vs.
Tea Board of India & Ors.
IA No. CAN/1/2020**

For the Appellant : Mr. Bikash Ranjan Neogi
Ms. Ananya Neogi
Ms. Anushka Ghosh

For the Respondent : Mr. Soumya Majumdar, Ld. Sr. Adv.
Nos.1 and 3 Mr. Victor Chatterjee,
Mr. A. Sarkar

Heard On : 19.09.2025

Judgment On : 25.09.2025

Sujoy Paul, J.

1. This *intra* Court appeal challenges the Judgment dated 14th May, 2019 passed in WP 6591 (W) of 2013 whereby Learned Single Judge dismissed the writ application.

Facts:

2. The appellant filed the said writ petition challenging the selection process for the post of development officer pursuant to the advertisement issued by Tea Board of India (Board). As per the

advertisement, total vacancies for the said post were 41. Out of 41 posts, 6 posts were earmarked for SC category whereas 3 and 10 posts were earmarked for ST and OBC categories respectively. The appellant submitted his candidature for the said post in SC quota and participated in the written examination followed by interview. The stand of appellant is that the result of written examination and marks obtained by the candidates were not disclosed. The appellant unsuccessfully tried to obtain the said information by preferring an RTI application but same could not fetch any result. The appellant filed the instant writ petition which came to be dismissed.

Contention of the appellant:

3. The Learned Counsel for the appellants submits that as per the stand taken by board in Affidavit-in-Opposition, a general candidate must secure 60% marks in the written examination whereas a reserve category candidate must secure 55%. The same is the criteria for the interview. The appellant allegedly received 14.7 marks in interview and accordingly, appellant was declared as failed and could not secure employment. The learned counsel for the appellant urged that 25 candidates successfully passed the selection process which includes 13 candidates under reserve category comprising of 1 SC and 1 ST and 11 OBC and 12 general category candidates. In obedience of order of Learned Trial Judge dated 8th November, 2018, the board filed a Supplementary Affidavit and stated about the qualifying marks for written examination and interview mentioned hereinabove. The learned counsel for the appellant further submits that 11 reserve category

candidates obtained more marks than the minimum cut of marks for general category and hence they were treated as general category candidates and were accordingly appointed. The learned counsel for the appellant prepared a written note and out of the said note canvassed the ground that initially the total marks to appear in the interview were fixed as 100. Out of 100, the selection board granted 14.7% marks to the appellant. The marks were subsequently reduced from 100 to 80 with a view to declare unqualified candidates as qualified. This act of reducing the marks should not have been done after completion of the interview. The stand of appellant is that after having reduced the marks from 100 to 80, the marks obtained by appellant in interview should have been correspondingly changed by treating the total marks as 80. This exercise has not been done which vitiates the selection process. The argument about discrimination was raised by contending that the candidate namely, Anupam Nandi was not included in the merit list originally but he was subsequently added. In the written note following points are raised:

- I) In the advertisement it was not mentioned that competitive examination would be conducted and qualifying marks were not disclosed. Hence selection is bad in law.
- II) The action of reducing the total marks for interview from 100 to 80 to favour certain candidates was improper.
- III) The candidates who could not secure qualifying marks, were appointed and this aspect was highlighted in the reply/rejoinder.

IV) The action of Respondents in favouring above candidate is discriminatory.

4. In support of these submissions following Judgments of Supreme Court were cited:

(K. Manjusree vs. State of Andhra Pradesh & Anr. 2008 (3) SCC 512 Para 2; P. Mohanan Pillai vs. State of Kerala and Ors. 2007 (9) SCC 497 Para 10, 11)

5. *Per contra*, Shri Soumya Majumdar Learned counsel for the board urged that since the appellant participated in the entire selection process without any objection/demur, after becoming unsuccessful, appellant cannot raise objection about correctness of the selection process. The question of discrimination was never raised in the writ application. The allegation of discrimination was made against certain persons but none of them were impleaded as a party respondent. This Court is not obliged to conduct any fishing and roving enquiry. There is no apparent illegality which warrants interference. Appellant was a reserve/SC category candidate and could not obtain minimum qualifying marks in interview. Thus, he has no enforceable legal right to get appointment. He supported the order of Learned Single Judge.
6. No other point is pressed by learned counsel for the parties. We have heard the parties at length and perused the record.

Analysis:

7. The first attack by the appellant to the selection process is on the ground that in the advertisement, the board has not mentioned that written examination will be followed by the interview. Suffice it to say

that admittedly appellant participated in the selection process and cleared the written examination. When he was called for interview, he participated in the interview without raising any eyebrows. In absence of any objection before participating in the interview, the appellant cannot challenge the outcome of selection process after becoming unsuccessful.

(See: *Madras Institute of Development Studies v. K. Sivasubramaniyan*, (2016) 1 SCC 454)

8. The reserve category candidates who have secured more marks than the minimum cut of marks fixed for general candidates could secure position in the general category list. We do not see any infirmity in this action of the board. A reserve category candidate who has secured more marks than a general category candidate certainly deserves appointment in the general category. For this reason, no interference is warranted in the selection process. Another point strenuously contended is that initially appellant was given 14.7 marks in the interview out of 100 marks. However, later on, the marks were reduced from 100 to 80. Even assuming that total marks were so reduced, it will not cause any dent to the selection process for the simple reason that appellant could not secure 55% marks in interview even if total marks are treated to be 80 in place of 100. Thus, this argument is devoid of substance.
9. The appellant for the first time by filing reply affidavit/rejoinder raised the point of discrimination. This question of fact cannot be permitted to be raised by way of rejoinder for the first time.

(See: Pandit M.S.M. Sharma v. Sri Krishna Sinha AIR, 1959 SC 395; Arti Sapru v. State of J & K, (1981) 2 SCC 484; Ashok Lanka v. Rishi Dikshit, (2006) 9 SCC 90)

10. Apart from this, the appellant has not impleaded any such person who were given favourable treatment and secured marks over and above the appellant in the matter of selection for the post of development officer. The Judgment of Supreme Court **K. Manjusree (supra)** deals with the principle of ‘scaling down of marks’, as discussed above, even if reduced total marks are treated as 80, in place of 100, the appellant has not secured 55% marks out of 80 marks. Thus this Judgment in **K. Manjusree (supra)** is of no assistance to the appellant. Similarly, Judgment of **P. Mohanan Pillai (supra)** did not help the appellant because Supreme Court clearly stated that for fixing of maximum marks for interview, no hard and fast rule can be laid down. It would depend upon the nature of duties of a particular post. The appellant could not point out any statutory violation or infringement of fundamental rights. The Learned Single Judge has assigned plausible reasons for rejecting the writ petition. We find no reason to disturb the impugned Judgment. The appeal **fails** and is hereby **dismissed**.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)