

Form J(2).
Item No. 75
Court No. 1

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

**Present:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WPCT 2 OF 2019

**Sanjit Ghose
Vs.
Union of India & Ors.**

Appearance:-

For the Petitioner : Ms. Malabika Saha, Adv.
Ms. Aphipha Khan

For the Respondent : Ms. Sushmita Saha Dutta, Adv.

Heard on : 10.02.2026, 02.03.2026

Delivered on : 02.03.2026

Judgment (Oral)

Per, SUJOY PAUL, CJ.:-

1. This petition filed under Article 226/227 of the Constitution of India assails the order of the Central Administrative Tribunal (Tribunal), Kolkata Bench dated

27th March, 2018 passed OA 350/636/2013 whereby the relief claimed by the petitioner/applicant was declined.

2. The necessary facts for adjudication of this matter are that the petitioner pursuant to an advertisement dated 4-10th September, 2010 submitted his candidature for the post of semi-skilled tradesmen. The petitioner was selected in the said selection. The petitioner was offered appointment at one of the factories at Pune also. However, the learned counsel for the petitioner informed that the petitioner did not opt against such offer of appointment and at present also not pressing any relief in relation to his appointment at Pune.
3. Learned counsel for the petitioner submits that the fruits of the first selection test were not passed on to the petitioner by appointing him and on the contrary, the respondents initiated fresh recruitment process vide notice no.OFRB/2012/1 in the year 2012. When petitioner came to know about commencement of new selection process regarding the same posts, he filed the instant OA. The

Tribunal initially opined that one post in the new selection post be kept vacant for the petitioner.

4. In the meantime, the department conducted a re-test wherein the petitioner also participated. After completion of pleadings, the Tribunal dismissed the OA solely on the ground that since the petitioner participated in the re-test he has no right to get the benefit of appointment pursuant to the first selection based on advertisement dated 4 to 10 September, 2010. Criticizing this order, the learned counsel for the petitioner submits that merely because the petitioner participated in the re-test, it will not operate as an 'estoppel' to assail the action or inaction of the department in not issuing the appointment order pursuant to selection based on advertisement dated 4 to 10th September, 2010. The ld. Counsel for petitioner informed that in this case, a Division bench of this Court passed a detailed order. The petitioner feeling aggrieved by the said order dated 9th August, 2019 filed a review petition, being RVW 300 of 2019. During the pendency of this review, the

Ordinance Factory informed that said re-test was also cancelled. Since review was allowed, present WPCT 2 of 2019 was restored to its original number. The principle argument of the learned counsel for the petitioner is that once the petitioner was selected in the first examination aforesaid, the department was not justified in proceeding with the second selection test of 145 candidates. Learned counsel for the petitioner urged that the Tribunal has erred in rejecting the application on impermissible ground. The Tribunal did not examine the validity of the action of the department in canceling the first examination/selection.

5. Learned counsel for the Department, on the other hand, supported the impugned order.
6. No other point is pressed by the parties.
7. We have heard the parties at length and perused the record.
8. Before dealing with rival contentions, it is apposite to reproduce the relief claimed by the petitioner before the Tribunal:

“8. RELIEF SOUGHT FOR:-

8.1) The immediate issuance of appointment letter to the petitioner without any further delay.

8.2) The urgent order of status quo may be issued on the new recruitment process initiated by the OF Dum Dum vide notice Adv. No. OFRB/2012/1 with online Registration of Application (opening date 01.11.2012 and closing date 21.11.2012).

8.3) The respondents be directed to suitably compensate the petitioner for harassing the petitioner and causing irreparable loss to his career progression.

8.4) The respondents be directed not to issue any further selection or appointment letter to any of the applicants under the new recruitment process unless the selection process of the petitioner is completed and appointment letter is issued.

8.5) Any other relief or relieves for which the petitioner is entitled to.”

(Emphasis Supplied)

9. A microscopic reading of the relief Clause makes it clear that petitioner has not called in question the legality, validity and propriety of the cancellation of first selection process. On a specific query from the Bench, learned counsel for petitioner fairly submitted that when Department filed its affidavit in opposition before the Tribunal, for the first time, they informed that first selection process has been cancelled. In our considered view, if petitioner intended to assail the cancellation of

first selection, he should have amended his original application, added grounds to assail the cancellation and should have suitably amended his relief clause as well.

10. For the reasons best known to the petitioner, no such grounds and reliefs were amended/added. In absence thereof, there was no occasion for the Tribunal to examine the legality, validity and propriety of the decision of cancellation of the selection process of the year 2010. Pertinently, in the impugned order, the Tribunal framed an issue which reads thus:

“The issue which requires to be resolved in the context of adjudication of the instant application is whether the applicant is entitled to appointment when the process of recruitment of 27 posts of Industrial Employment (Tradesman) relating to such appointment had been held to be vitiated.”
(Emphasis Supplied)

11. A bare perusal of this issue makes it clear that Tribunal framed the question whether the petitioner is entitled to appointment when process of recruitment of 27 Posts

relating to such appointment had been held to be vitiated. Since petitioner had not challenged the decision of cancellation of selection, the issue is worded in a different way. The issue framed suggests that even if the selection process is held to be vitiated, whether petitioner has any claim for appointment.

12. The Tribunal rejected the original application solely on the ground that petitioner participated in the subsequent re-examination held on 30.11.2014. In our considered opinion, the singular reason assigned by the Tribunal cannot sustain judicial scrutiny. The subsequent appearance in re-examination held on 30.11.2014, will not extinguish/take away the right of petitioner to get the fruits of provided selection, provided he is able to establish that cancellation of first selection was bad in law.

13. The difficulty faced by us is that this question of validity of cancellation of first examination cannot be

examined by us as a Court of first instance in absence of any ground taken and prayer made before the Tribunal. Similar is the difficulty for examining the correctness/ validity of decision of cancelling the re-test. The Constitution Bench in the case of **L. Chandra Kumar vs. Union of India & Ors.** reported in **1997 (3) SCC 261** opined that the Court of first instance is the Central Administrative Tribunal. The High Court by no stretch of imagination can act as a Court of first instance.

14. In this view of the matter, we cannot examine the legal propriety of cancellation of first selection pursuant to an employment notice dated 4-10th September, 2010 and action of cancellation of re-test pursuant to re-examination held on 30.11.2014. Thus, at the level of High Court, no relief is due to the petitioner.

15. However, we are not oblivious of the fact that petitioner has fought the long drawn battle in the corridors of the Court pursuant to his selection in the first examination.
16. Thus, while disapproving the order of Central Administrative Tribunal passed in O.A. No.636 of 2013, we deem it proper to restore the O.A. to its original file and number.
17. In the peculiar factual backdrop of this case, we deem it proper to permit the petitioner to file an amendment application (if so advised) to assail the cancellation of selection pursuant to advertisement dated 4-10th September, 2010 as well as cancellation of re-test held pursuant to re-examination dated 30.11.2014. If such amendment application is filed, we have no doubt that the Tribunal will deal with it in accordance with law.
18. Resultantly, the impugned order is **set aside** with the aforesaid observation.
19. The, the petition is **disposed of**.

20. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned counsel for the parties, upon compliance of all formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)

RP(AR.CT.)