
(2018) 03 OHC CK 0002
In the Orissa High Court
Case No : O.J.C.No.3216 of 2002

TRILOCHAN BISEN AND ANOTHER

APPELLANT

Vs

CHAIRMAN COAL INDIA LTD KOLKATA AND OTHERS

RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0002

Hon'ble Judges : BISWANATH RATH

Bench : Single Bench

Advocate : P.K.Mohanty, S.S.Kanungo

Final Decision : Dismissed

Judgement

Biswanath Rath,J

1.This writ petition has been filed seeking a direction from this Court to the opposite parties to give appointment to the petitioners in the post of

Executive-I and further to cancel the written test conducted on 4.11.2001 as well as viva-voce held in the first week of April, 2002 involving the

outsiders/freshers.

2. Short background involved in the case is that petitioner no.1 after completion of B.Sc. B.E. (Mechanical) following his success in the interview

process was given appointment as Foreman on 12.1.1989 and the petitioner no.2 in another selection process was given appointment as an Assistant

Foreman on 10.7.1993. Petitioner no.1 while continuing in service was given time bound promotion as Foreman-in-Charge on 12.1.1994 whereas

petitioner no.2 was given time bound promotion to the post of Foreman-in-Charge on 10.7.1998 and both were continuing as

such at the time of filing of the writ petition. It is stated that in the year 1994

there was a call for holding interview for the promotional post of Executive-I from the departmental candidates possessing the qualification of Engineering Degree (Mechanical/Electrical). It is claimed by the petitioners that both of them were selected in the said interview but for reason unknown to the petitioners, the interview was cancelled. For the same post, another interview was conducted in the year 1995. Petitioners though called to attend the interview but the interview was cancelled. Finally on 25.5.1997 a written test was again held for promotion to the post of Executive-I. Both the petitioners participated in the said interview. Upon receipt of bio-data of eligible candidates as per their communication dated 17.5.1997, the interview was to take place on 25.5.1997. The petitioners claimed that in the interview dated 25.5.1997 both of them remained qualified and their names appeared amongst 44 candidates selected in the written test. There was no further development pursuant to such interview and in the meantime by virtue of a communication of the Chief General Manager (Personnel) dated 6.9.2000, the VC/DC and CR ratings in respect of eligible candidates was collected and eligible candidates were also advised to appear in the interview on 16.9.2000. It was indicated therein that the candidates will be considered against direct recruitment quota for the post of MT (Exm./Excm). The petitioners claimed that some candidates out of 44 candidates selected in the written test were called to attend the viva-voce test scheduled to be held on 16.9.2000. It is alleged that even though the petitioners were included in the 44 selected candidate list, unfortunately, they were not called to attend the viva voce test held on 16.9.2000. On the other hand, the petitioners were called for to attend the viva-voce test on 8.11.2000 as departmental candidates belonging to S.T. and O,B.C. category. Pursuant to communication under Annexures-4 and 5, petitioners appeared viva-voce test on 28.12.2000 and both of them disclosed that they had good performance in the viva-voce test. It is alleged that when the petitioners were waiting for result in the departmental promotion, they got surprised to know that there is only 20 candidates selected for the vacant posts on 8.3.2001. There was no intimation with regard to non-selection of the petitioners and in the meantime an open advertisement for holding interview from freshers was made and as a consequence, the interview was also held on 4.11.2001. Getting information that the viva-voce in the

subsequent interview process going to be conducted in the first week of April, the petitioners submitted representation for considering their case.

The petitioners alleged that there has been no effect to their representations. Petitioners alleged that there was no reason for canceling the previous

interview process. It is further alleged that once the petitioners were qualified in the written test, there was no reason for not calling them for the viva-

voce test held on 16.9.2000. Petitioners also alleged that had the authority followed the reservation rule properly, petitioners could have been surely

promoted. It is also alleged that once the selection process is undertaken for selection of the candidates as direct recruitment from amongst the

departmental candidates, there was no reason for dropping such process and taking a decision to consider the outsiders. It is under the circumstance,

learned counsel for the petitioners claimed that there is a clandestine attempt in the matter of filling up the departmental post and there has been a

deliberate omission of the case of the petitioners thereby. Shri Mohanty, learned counsel for the petitioners placed some factual aspects regarding total

number of vacancies and particular percentage of the vacancies meant for direct recruitment quota and as a consequence it is alleged that there is no

norm followed in the selection process indicating nowhere that candidates securing better marks combining marks of written test as well as viva-voce

test will be selected. Learned counsel for the petitioner further contended that in absence of any such norm, once a candidate got selected in the

written test, the test so far as written test is concerned gets closed and marks obtained in the viva voce only is relevant for the purpose of promotion.

It is thus alleged that there is deliberate omission of the case of the petitioners in the selection process.

3. Contesting opposite parties on their appearance filed counter seriously objecting the case of the petitioners. The contesting opposite parties

contended that admittedly the selection process was initiated in the year 1994 for considering the eligible departmental degree holders for their

selection/promotion to the post of Executive Cadre as Engineer/Assistant Engineer in E.I/E.2 grade. Selection could not be finalized for again entering

into a selection process in the year 1997. Following the established norms of selection procedure, candidature of candidates coming under reserved

category was considered under relaxed standard. Candidates succeeded in the written test were called for the personal interview and after combining

their marks obtained both in written as well as viva-voce, a panel was prepared. In all 11 E&M and 9 Executives were empanelled. It is further

contended by the opposite parties that even though the petitioners were considered under relaxed standard but unfortunately petitioners though

qualified in the written test but they were not empanelled as the selection committee did not recommend their names for empanelment. The opposite

parties, thus contended that it is false to claim that the petitioners have been discriminated or there is illegal ignorance of their names. While admitting

that at a subsequent stage, VC/DC and CR rating of the candidates were called for, the opposite parties contended that the interview took place in

two spells. Second spell was exclusively for OBC and SC/ST candidates. Although in first spell some reserved category candidates were interviewed

but they were all interviewed as they had all scored better marks than the general candidate keeping them in the category of general candidates. As

the petitioners do not fall to such category, therefore, there was no question of their empanelment. While denying all allegations made by the

petitioners, Shri Kanungo, learned counsel appearing for the opposite parties contended that there has been right consideration of all the candidates in

the interview and it is for the poor performance of the petitioners and further candidates securing good marks in the written test as well as viva-voce

test have only been selected. The opposite parties also filing an additional affidavit submitted that even though the petitioners were considered along

with other candidates in the reserve category, it is claimed that even after granting standard relaxation, the petitioners could not get through.

Therefore, they have not been empanelled or promoted. Shri Kanungo, learned counsel for the opposite parties thus contended that since the

appointment has been given to better candidates than the petitioners and for the demonstration at page 3 of the additional affidavit, the contesting

opposite parties claimed that both the petitioners were called to attend the interview on the basis of their performance and as both of them were found

to be securing less mark than the lowest candidate selected as S.C. category, there was no occasion for their empanelment.

4. Considering the submissions of the respective counsel and at this stage while going through the order-sheets involving the case, this Court finds on

the hearing of the matter by a previous Bench on 29.9.2016, this Court has recorded that the petitioners have virtually raised two grounds in assailing

the selection process, which are as follows :-

I) The Selection Committee has prepared merit list of Excavation Discipline by taking aggregate marks of the written examination and the interview

which according to the petitioner is not proper for the reason that the selection procedure provides that a candidate is to be qualified in the written

examination is not worth to be seen rather it is only on the basis of the marks obtained in the interview, the selection has to be done. The petitioner

no.1 has secured 4 marks and the petitioner no.2 has secured 5 marks in the interview while Bijendra K. Mahato, General Singh have secured 3 and 4

marks respectively but even then they have been selected and engaged as would be evident from Annexure-B annexed to the additional affidavit is at

Flag-â??Dâ??. Learned counsel for the petitioner is not in a position to convince this Court on what basis he is submitting this argument as such he

seeks for further adjournment to argue further on this issue.

II) Reservation policy has not been followed as per Model Roster of Reservation annexed as Annexure-A to the additional affidavit is at Flat-D,

whereby and where under, total 16 vacancies have been advertised to be filled up in Excavation Discipline for which written test was held on

25.5.1997 and as per the reservation roster, out of 16 vacancies four vacancies out to have been filled up from OBC category but from Annexure-B

annexed to the additional affidavit, it would be evident that none of the candidates have been appointed under OBC category getting the benefit of

relaxation of reservation policy/roster point.â??

While summarising the grounds raised by the learned counsel for the petitioners and on consideration of the submission, inter alia, the objections of the

Counsel for the O.Ps. ultimately the matter was postponed directing the Counsel for the O.Ps. to come forward with further additional affidavit

supporting the stand of the O.Ps. placed during hearing of the matter on the previous occasion. In the meantime almost one year has passed, this

Court finds no such affidavit filed by the O.Ps. nor even any request is made by the O.Ps. for seeking time to file the additional affidavit as desired by

this Court by the above order. It is at this stage, considering the submission and the grounds raised by the learned counsel for the petitioner, this Court

in absence of further affidavit by the O.Ps. finds, in the event the petitioners had any allegation with regard to selection of Bijendra K. Mahato and

General Singh having secured lesser marks than the petitioner in the viva-voce, further for the petitioners securing more marks in the viva voce and

for the petitionersâ?? failure in producing any material to establish that the securing of marks in the viva voce is the only consideration in the matter

of selection, this Court is unable to get into such aspect.

5. Now coming to the other aspect, the ground no.2 being raised by the petitioners, particularly on non-observance of Reservation Policy in the matter

of impugned selection, in absence of any material particulars, this Court is unable to get into such issue.

6. Now considering the other aspects involving the matter, considering the rival contentions of the parties and material produced in establishing their

respective case through writ petition, the counter, the rejoinder, the additional affidavit of the opposite parties and additional affidavit to the counter by

the petitioners, this Court finds the allegation so far it relates to non-selection of the petitioners in the interview process taking place in the year 1994

as well as 1997, for the petitioners appearing in the subsequent test held in the year 2000 without opposing abandonment of the previous selection

process, this Court observes that petitioners are estopped from making any claim with regard to the previous selection process. So far as subsequent

interview process is concerned, from the additional affidavit filed by the opposite parties, for the clear statements made therein by the contesting

opposite parties particularly for the averments made in paragraphs-5, 6 and 7, this Court finds the selection list containing 9 candidates are better

candidates than the petitioners. For the petitioners scoring less marks than the selected candidates, this Court finds the allegation of the petitioners in

the matter of non-consideration of their case remains unfounded. During course of argument, on the asking of the Court, the contesting opposite

parties produced the note-sheets involving the selection process. From perusal of the note-sheets, this Court finds, there is no defect in the matter of

selection process involving the petitioners. Further, for the petitionersâ?? scoring less mark than the selected candidates in the selection process, this

Court finds there is no infirmity in the selection process. Under the circumstance, this Court finds no merit involving the writ petition.

7. In the result, the writ petition stands dismissed. No order as to costs.