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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.1738/94

New Delhi this the 2nd Day of March, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.K. Singh, Member(A)

1. Sh. Bahadur Singh,
S/o Sh. Buchi Ram,
C/o Sh. Laxman Prasad,
D-45, Gali No.7,
Ganesh Nagar,
Delhi-92.
2. Sh. Jagjit Kumar,
S/o Sh. Upkar Dass,
C/o Sh. Subhash Chand,
145/3, Railway Colony,
Shivaji Bridge,
New Delhi.
3. Sh. Pawan Kumar,
S/o Sh. Madan Lal,
C/o Sh. Prem Chand,
F-141, Raghbir Nagar,
Delhi-27.
4. Sh. Sudhir Sharma,
S/o Sh. Bhushan Lal Sharma,
C/o Sh. Lalit Kumar Sharma,
Kharian Mohalla, House No.7883,
Roshanara Road, Subzimandi,
Delhi-54.
5. Sh. Mohand Kumar Singhari,
S/o Sh. Vishwa Mittar Singhari,
C/o Sh. Urmal Madan,
Pocket G-26, Flat No.388,
Sector-3, Rohini,
Delhi.

Applicants

(through Sh. M.L. Sharma, advocate)

versus

1. Union of India through
Secretary, Ministry of
Railways, (Railway Board),
Rail Bhawan,
New Delhi.
2. The General Manager,
Rail Coach Factory,
Kapurthala(Pb).
3. The Chief Personnel Officer,
Rail Coach Factory,
Kapurthala(Pb).

Respondents

(through Sh. P.S. Mahendru, advocate)

ORDER(ORAL)

delivered by Hon'ble Mr. J.P. Sharma, Member(J)

Applicant No.1 is said to be of S.C. category and other four applicants are of general category who have been allowed to file this application jointly, aggrieved by non-appointment to the post of Junior Chemical and Metallurgical Assistant in the scale of Rs.1320-2040(RPS). Though they appeared in the written test held on 27.9.1992 and also on their performance interviewed on 26.2.1993 by Railway Recruitment Board and have also been empanelled and brought in select list. 14 posts were advertised and 14 such candidates including the applicants were recommended for appointment by the Railway Recruitment Board, this included three candidates of reserve category. In this application filed in August, 94, the applicants have jointly claimed the grant of the reliefs against the respondents that a direction be issued to give appointment to the applicants as per the select list and in any case the life of the panel be extended. The applicants have also prayed for consequential benefits.

A notice was issued to the respondents who contested this application and did not deny the fact of enlisting of the candidates in the select list but have taken the stand that persons holding first three ranks in the select list were given offer of appointment and subsequent persons in the merit list could not be given offer of appointment for the post of Junior Chemical Metallurgical Assistant because there was no job requirement available for them though requisition was rightly placed to the Railway Recruitment Board taking

into view the then and expected work load for the JCMA's. Due to sudden change in production plan, the work load of JCMA's had drastically cut in RCF and the competent authority took a decision in public interest not to operate the present panel and cancelled the requisition already placed to Railway Recruitment Board. To substantiate this annexure R-1 dated 3.6.1994 has been filed. The appointment to the three candidates was given strictly according to merit. It is, therefore, stated that the applicants have no case.

The applicants have filed a rejoinder-affidavit reiterating the same facts and highlighting that the respondents have taken action inordinately delaying the decision and that the action of the respondents is arbitrary inasmuch as some of the persons from the panel had already been given appointment and the applicants have been discriminated which is illegal and violative of the Constitutional provisions. It is also stated that actual position has been suppressed by the respondents in the counter. The respondents are bound to appoint the persons in the select list and also adhere to the communal roster maintained by them. Alongwith the rejoinder, the applicants have also filed a copy of the letter from the Ministry of Railway (Board) addressed to the General Manager for drawing office cadres from the recruitment in scale of Rs.260-430, issued in April, 1985. Certain decisions were taken by the Ministry of Railway for alternative avenues of advancement for the Group-D (Class-IV) staff and certain directions were also given to the Railway Recruitment Board that where they have

already notified vacancies in the categories of Tracers but examinations are still to be conducted by them, the candidates therefor should be examined for posts of staff like office clerks, accounts clerks, commercial clerks etc. in the initial recruitment grades of Rs.260-400(RS). In case the post advertised for Tracer, the candidates who are successful are not willing, may be treated as having withdrawn the application from the Railway Recruitment Board.

We heard the learned counsel of both the parties.

The learned counsel for the applicants highlighted the averments made in the original application and contended by placing before us a decision of the Hon'ble Supreme Court in the case of Smt. Asha Kaul and Anr. Vs. State of Jammu & Kashmir and Ors. reported in Judgements Today 1993(2) SC 688. This is a case of selections of District Munsifs in the State of Jammu & Kashmir. Earlier, the vacancies notified were 10 but subsequently number of vacancies were raised to 25 and the Public Service Commission, Jammu & Kashmir sent two lists containing 20 names and other three names of S.C. candidates and appointments were given to first 13 in that list. The applicant preferred an appeal before the learned Single Judge of Jammu and Kashmir and which was allowed. The Government of Jammu and Kashmir preferred an appeal before a Division Bench and the Division Bench upheld the right of the government of Jammu & Kashmir in not giving appointments in the select list of Munsif beyond serial

No.13 and made observations that the Government has got certain absolute powers for giving appointments but that should not be used arbitrarily in a manner which shows discrimination. The Writ Petition was dismissed by the Supreme Court and upheld the view taken by the Division Bench of Jammu & Kashmir. The Hon'ble Supreme Court has also referred in this decision the case of Shankarsan Dash Vs. Union of India reported in JT 1991(2) SC 380 which is a case of I.P.S. officer who claimed appointment to the post as one of the candidates selected and recommended but not appointed in vacancy caused in due course and represented for his appointment to the post. The Govt. refused and in the Writ filed the Hon'ble Supreme Court held that only by the name of a person appearing on merit list does not acquires indefeasible right to be appointed. The Hon'ble Supreme Court has referred the case of M.S. Jain Vs. State of Haryana reported in AIR 1977 SC 276 and State of Haryana Vs. Subhash Chandra Marwaha reported in AIR 1973 SC 2216. Both the authorities lay down that mere inclusion in the select list does not confer any right upon the person included therein and he does not acquires indefeasible right to be appointed. However, the Hon'ble Supreme Court has held that the Government is to act fairly. As referred to above, the case of Shankarsan Dash Vs. Union of India(supra), it has been held that the decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. Now applying the

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aforesaid 'ratio' to the present case, we find that those listed in the merit list at serial Nos. 1 to 3 were given appointments taking into the job requirement for JCMA's. We have seen the record produced by the learned counsel for the respondents and we find that the applicants name do not figure in the first, second and third and they are beyond that serial No. The Government, therefore, has given appointments on the basis of merit as projected in the select list. We have also seen the reason for discontinuing the panel and that is reasonable and convincing that at the time when the vacancies were referred to Railway Recruitment Board, it was expected that the work load to be such as to accommodate 14 persons. Subsequently, because of the review of the work or shrinkage in the job requirement, the Government has decided in a justifiable and fair manner that no more appointments are required in the public interest. It is for the Government to determine the exigency of the service and to fill up the posts required to man the work as per job requirement. Thus, we do not find any arbitrary action on the part of the respondents.

However, one fact remains and that is applicant No.1 is a S.C. candidate and the respondents in giving appointment from the merit list to serial No.1 to 3 have omitted to consider the communal roster maintained and reserved point had been ignored. However, we find Sh. Bahadur Singh who is S.C. candidate undisputedly comes at serial No.14 of the select list. There is two other S.C. candidates who are at serial No.12 & 13. In any case, if the roster

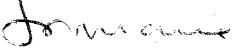
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point would have been maintained, applicant No.1 could not have got an appointment on the reserved point as revealed by the communal roster. Only a person who has a grievance can be given the relief if he otherwise is eligible on account of any flaw or omission committed by the appointing authority either inadvertently on account of administrative lapse or in any other manner but since applicant No.1 does not stand any chance of being appointed so we do not take serious notice of this omission of the administration.

No other point has been prayed before us. We find that the present application is devoid of merit and the same is dismissed, leaving the parties to bear their own costs. However, if subsequently this panel is operated that should be according to merit alone and the case of the applicants should not go by default.


(B.K. Singh)

Member(A)


(J.P. Sharma)

Member(J)

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