

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.140/88

DATE OF DECISION: 29.1.92.

SHRI BHOOP SINGH & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANTS

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

SHRI O.N. MOOLRI, COUNSEL

1. Whether Reporters of the local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

I.K. Rasgotra
(I.K. RASGOTRA)
(MEMBER (A))

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Bhoop Singh and three others, in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 has assailed the order No.EMC-1/807/-188/Recruitment/AMC dated 1st January, 1986, passed by the respondents, cancelling the selection held on 22.5.1985, 23.5.1985, 28.5.1985, 24.7.1985, 25.7.1985 and 26.7.1985 for the posts of Loco Cleaner.

2. The case of the applicants is that they were duly selected in the selection held on various dates indicated in the impugned order and the select list containing the names of the successful candidates was published in July, 1985 (Annexure A-2). The applicants, i.e., S/Shri Bhoop Singh, Parmod Kumar, Vinod Kumar and Rakesh Kumar appear at serial Nos.71, 21, 63 and 64 respectively.

The above selection was held in pursuance of the Railway Board's letter No.83-E/SCT/30/8 dated 31.1.1984 to clear up the back log of vacancies of Cleaner reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) candidates by advertising the vacancies and inviting applications from the members of the SC/ST communities. The applicants submit that the said panel prepared by Divisional Railway Manager (DRM), Moradabad was approved by the General

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Manager, as is apparent from the following endorsement made by him and that on receipt of letter dated 3.12.1985 from the Northern Railway:-

"In view of the ensuing Kumbh Mela, the case was discussed with the General Manager regarding operation of the panel of SC/ST. The General Manager has approved the panel. The panel accordingly was enlarged and approved by competent authority."

Thereafter, however, the DRM abruptly cancelled the panel eventhough the panel had been partly operated by appointing 21 SC candidates who were selected from among the casual labour/substitutes and 10 ST candidates. The applicants who are recruited directly from the open market represented against the cancellation of the panel and the matter also came up in the PNM meeting held on 11/12.12.1986 vide Agenda item No.31/86 when the memebrrs of the staff side "reiterated that it was wrong to cancel only two panels whereas all the three panels which were formed as a result of screening held on the above mentioned dates should have been treated as cancelled.....DRM/MS will be asked to reexamine the fact and to treat the third panel as cancelled."

Thus, the third panel which included the 21 ST candidates was also cancelled. The order cancelling the operation of the panel which had been partly operated was challenged by the concerned employees in **Vijay Singh Meena & Ors. vs. UOI (OA NO.279 of 1987** when the Tribunal vide its judgement dated 6.9.1991 held the impugned order as illegal, unconstitutional and arbitrary and quashed the same. The applicants stand is that they were selected in pursuance of the directions of the Railway Board, and the panel of the selected candidates, approved by the General Manager could not be cancelled by the DRM, as such cancellation was violative of the principles of natural

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justice.

By way of relief the applicants pray that the impugned order, issued by respondent No.2 (Annexure A-1) be quashed with a further direction to the respondents to appoint the applicants on the basis of panel which had been formed after holding selection.

3. The respondents in their counter-affidavit have taken the preliminary objections that no cause of action has accrued for the applicants to approach the Tribunal, as the panel was not operated upon, the same having been cancelled. Further the claim of the applicants is time barred, as the selections were held in July, 1985 while the O.A. has been filed in 1988. On merits the respondents deny that there was any heavy back log of reserved vacancies of cleaners. On the other hand, they submit that the short fall in the reserved category was calculated wrongly and instead of counting the shortfall of reserved community against the posts filled by general community, the short fall took into consideration even the future vacancies. They further submit that future short fall could not have been anticipated, as the short fall was only against the existing vacancies. They further submit that procedure for advertising the post from open market too was wrong, as there were enough number of SC candidates available from among the casual labour and substitutes already employed on the Railway. There was thus no need to resort to direct recruitment from open market.

The learned counsel for the respondents, Shri O.N. Moolri, further submitted that the panel was neither published nor was it operated, nor was the panel approved by the General Manager. Admittedly, however, the DRM had discussed the matter with the General Manager who conveyed the approval to the proposal of the DRM in the context of requirement in Kumbh Mela. Such confidential discussions cannot be taken as formal approval. It is further urged by

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the respondents that placing of a candidate in a panel does not bestow any legal right on him for appointment till the panel is notified and until and unless an offer of appointment is communicated to the candidate after following certain formalities. A panel which has not been published or circulated does not give any legal right to the applicants for appointment.

4. The applicants have filed a rejoinder.

5. Regarding the limitation the learned counsel for the applicant submitted that the panel was cancelled on 17.11.1986. Thereafter a representation was made by the applicants on 17.2.1986. The matter thereafter was taken up through the recognised unions and figured in the PNM meeting held on 11/12.12.1986. Further a representation was made by the union on 22.4.1987 and the O.A. was filed on 19.1.1988. The learned counsel submitted that the panel once formed after following due process cannot be cancelled and nor can its life be abridged until the last man on the panel is appointed.

6. We have heard the learned counsel for both the parties and considered the matter carefully. As far as the case of **Shri Vijay Singh Meena** (supra) is concerned, the main controversy in that case was:

"that the applicants were selected according to rules to fill up posts of Class-IV category and they were empanelled. After they have worked for a period of 14 months, an order was issued cancelling the panel from which they were given appointment."

The Tribunal, therefore, observed:-

"However, without disputing this contention of the respondents, the fact remains that the applicants have already worked for 14 months and they have not been given any show cause notice and without following the principle of natural justice orders for the termination of their services were initially issued though these were subsequently modified to

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treat the applicants as the substitutes to be regularised after screening."

It was in these circumstances that the Tribunal held "cancellation of the panel after the appointment of the applicants without giving them an opportunity of hearing is violative of Article 311 (2) of the Constitution of India and any order passed in that matter is liable to be strucked out." The facts of this case is, therefore, distinguishable from the facts of the matter before us.

The issue before us on the other hand is whether the applicants have any legal right to appointment by virtue of their having been placed on the panel when the panel itself has been cancelled?

The respondents have contested the statement made by the applicants and submitted that neither the panel was approved by the General Manager nor was it published. Photo copy of the said panel, attached with the application (pages 16-19 of the paper book) do not bear any number or date or any endorsement, as is usual practice in the office of the respondents. We also questioned if the selection was made against declared number of vacancies. The respondents denied that the selection was held against declared number of vacancies. At the same time neither the applicant nor the respondents could produce before us a copy of the advertisement issued for recruitment for the posts of cleaner. In the case of **S.P. Singh Chaudhari v. UOI OA 1649/90** decided on October 11, 1991 by the Principal Bench following the judgements of the Hon'ble Supreme Court in **Prem Prakash v. UOI & Ors. AIR 1984 SC 1831**, **Jatinder Kumar & Ors. v. State of Punjab & Ors. AIR 1984 SC 1850**, **Subhash Chander Marwaha & Ors. v. UOI 1974 (3) SCC 220** we have held:-

"(a) The judicial pronouncements referred to by the learned counsel for the applicants relate to cases where the selection was made to fill up the exact

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number of vacancies and the results of the selection so made were declared and communicated to the successful candidates. In the case before us, the panel of selected candidates was larger than the available vacancies. Consequently the results of the selection were neither communicated to the candidates nor published. The panel is merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board are directory and not mandatory and are not therefore enforceable by issue of a mandamus by the court. It is, the sole right of the Government to make appointment from the panel of names recommended by the Selection Board. The only constraint on the Government would be that it cannot travel outside list of names included in the panel by the Selection Board and it cannot deviate from the order of merit in which the names are placed in the panel.

(b) The 8.2.1982 letter of the Ministry of Home Affairs which extends the life of panel till exhausted is not relevant in the present case as the prerequisites for the life of the panel remaining active till exhaustion viz. (i) the selection is made for the exact number of vacancies and (ii) the results of selection are either communicated to the candidates or published, are not fulfilled. In the circumstances, the life of the panel in this case expired in July, 1989."

In the case before us, the panel had not been approved by the General Manager and the same was cancelled for a variety of reasons by the respondents. The case of **Vijay Kumar Meena & Ors.** (supra) also does not support the

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case of the applicants as none of the applicant was appointed on the basis of selection for any length of time and therefore is distinguishable on facts. In the circumstances, the question of any legal right for appointment in the case of the the applicants herein does not arise. We order accordingly.

The O.A. is, accordingly dismissed, with no order as to costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

I.K. Rasgotra
(I.K. RASGOTRA)
(MEMBER (A))

24/1/1992