

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1198/88
T.A. No.

1988.

DATE OF DECISION

14.9.90

Shri Suresh Chand & Ors.

Petitioner

Shri G.D.Bhandari,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri B.K. Aggarwal,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

Dee
(J.P. Sharma)
Member (J)

Cee.
(P.C. Jain)
Member (A)

Central Administrative Tribunal
Principal Bench: New Delhi.

Regn.No.OA-1198/88

Date of Decision: 14.9.90.

Shri Suresh Chand & Ors.

Applicants.

Vs.

Union of India & Ors.

Respondents.

For the applicants

.. Shri G.D.Bhandari,
Advocate.

For the respondents

.. Shri B.K.Aggarwal,
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)
Hon'ble Shri J.P.Sharma, Member(Judicial).

JUDGEMENT
(Delivered by Hon'ble Shri J.P.Sharma)

The applicants moved this application under Section 19 of the Administrative Tribunals Act,1985 assailing the order dated 6.5.1988 (Annexure A-1) issued by respondent No.2, Divisional Railway Manager(D.R.M.) Northern Railway, New Delhi, cancelling the provisional panel for the post of Assistant Station Master(A.S.M.).

2. The applicants claimed relief to quash the impugned cancellation of panel of selected persons for the post of A.S.M. and further that the directions be issued for taking action on the panel (Annexure A-6) and operating the same by giving appointments to the applicants.

3. The brief facts are that the posts of A.S.M. are filled by direct recruitment and also from the Operating and Commercial Staff of the Northern Railway by a process of Selection. A selection was held for the promotees grade in October,1986. However, the result of that was not declared and the selection was cancelled. So again the selection from the promotion quota for the post of A.S.M. was notified by Northern Railway, Divisional Personnel Office by letter No.847-E/33/I.P.1 dated 24.9.1987 (Annexure A-4), laying down the conditions for appearing in the aforesaid selection. The staff working in Operating and Commercial Departments of Delhi Division only was eligible for the

selection. The result of the written examination was declared by D.R.M. Office, New Delhi by the letter dated 8.11.1987 (Annexure A-10). The viva-voce of the selected candidates was also held and after that a provisional panel was issued by the D.R.M's Office, New Delhi by letter dated 24.11.1987 (Annexure-A-6). In this panel the name of the applicants, Shri Suresh Chand S/O Shri Radhey Lal and Shri Suresh Chand S/O Shri Mani Ram appear at Serial No.14 and 16. However, an application has been moved under Rule 4(5)(a) of the Central Administrative Tribunals (Procedure) Rules, 1987 where the 10 applicants (named in Annexure A-2) also sought protection of the Constitutional provision. This panel (Annexure A-6) was cancelled by the impugned order dated 6.5.1988 (Annexure A-1) and the order reads as follows:

"The provisional panel for the post of Assistant Station Master Grade Rs.1200-2040 (RS) issued vide this office letter of even No. dated 24.11.87 is hereby cancelled. All the staff concerned may be informed accordingly."

4. The applicants assailed the order of cancellation on the ground that no reason for cancellation of the panel has been given or assigned which goes to show that the order of cancellation has been passed arbitrarily in illegal and irregular manner. Further, it is said that the impugned order is not a speaking order and no notice before cancellation of the said panel was given to the applicants. Further it is said that the impugned order is in contravention of Rule 213 of the Indian Railway Establishment Manual (I.R.E.M.), as the persons empanelled were selected through a duly constituted D.P.C. That the said list of selected persons was duly approved by the competent authority as provided in Rule 216J of I.R.E.M. That the orders of cancellation dated 6.5.1988 (Annexure A-1) has been issued by an unauthorised and incompetent officer having no jurisdiction to do so. The cancellation order should have been passed by an authority higher to D.R.M. who is the competent authority as stipulated in I.R.E.M. Rule 216, "if in the formation of the panel and announcement of

the panel, procedural irregularities or other defects are found or it is considered necessary to cancel or amend such panel, this should be done after obtaining the approval of the authority next higher than the one who approved the panel.

5. The respondents contested the application challenging the verification of the original application, made at the bottom of the application, being not as laid down in the Central Administrative Tribunals (Procedure) Rules, 1987, particularly, rule 4(5). The respondents stated that the selection for the promotees quota of A.S.Ms. was held and the selected persons were empanelled, but the panel was cancelled because there were procedural irregularities in holding the selection which were pointed out by the Vigilance Department. As such, the same was cancelled by the competent authority under unavoidable circumstances. After selection it was the provisional panel of the selected candidates and so the order of cancellation is neither malafide nor discriminatory nor illegal. The applicants did not make any representation against the impugned order, and so they have not exhausted the remedy provided under the Administrative Tribunals Act, 1985.

6. We have heard the learned counsel for both parties at length and perused the records. Rule 26 of the Railway Establishment Rules reads as follows:

"(26) Amendment of the Panel: After the competent authority has accepted the recommendations of the selection board, the names of the candidates will be notified to the candidates. A panel once approved should normally not be cancelled or amended. After the formation and announcement of panel with the approval of the competent authority, if it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of authority next higher than the one that approved the panel.

(R.B.'s No.E(NG)167 PM 1/47 of 5.2.697 N.R.S. No. 4607. A panel of divisionally controlled post approved by D.S./D.R.M. can be amended by the H.O.D. concerned."

Thus, when an approved panel has been prepared, it can only

be cancelled by an authority next higher to the authority who approved the panel. The applicant has also filed (Annexure A-17 to the application at pages 31A and 31B) the extract of I.R.E.M. Rule 213, (a) to (c) and (j) to (l). This is in regard to selection to posts and cancellation of the panel. The respondents, however, contended that this does not relate to the selection but only is relevant relating to selection by promotion but it is not so. The respondents have not specifically stated either in the counter or by filing any document that the said panel was cancelled by an authority superior to the one who approved it. The order dated 24.11.1987 was issued by the Senior Divisional Personnel Officer but it is not said that it was issued by the approval of the D.R.M. Other documents relating to notification of the vacancies etc. was also issued by the Senior Divisional Personnel Officer. However, the D.R.M. is the appointing authority and the provisional panel has to be approved by him in his capacity of the of Head/Office. Senior Divisional Personnel Officer cannot approve of the panel. The impugned order (Annexure A-1 quoted above) only notified the cancellation of the panel by the order dated 24.11.1987. The communication addressed to the Railway Advocate, Shri B.K. Aggarwal, dated 25.4.1988 (Annexure A-7) shows that the provisional panel of A.S.Ms. announced on 24.11.1987 have been cancelled by D.R.M. New Delhi vide S.No.387 of File No.844E/33/1/1/PI.

7. In view of the above, it cannot be said that the panel has been cancelled by the competent authority and so the order of cancellation itself suffers from defect, inasmuch as, it has been done by an authority not superior to the one who approved the panel and the impugned order, therefore, has to be struck down.

8. The next ground of the applicants is that the order of cancellation of panel does not give any reason as it is

(12)

by a totally non-speaking order. From the counter filed by the respondents also, it is clear that no specific mention has been made as to what led to the cancellation of the said panel except on the basis of a report of the Vigilance. But what was that report and what were its contents have not been mentioned in the affidavit nor it was placed before the Bench nor any privilege has been claimed by the respondents. Not only this, the learned counsel for the respondents conceded during arguments that he was also ignorant of the reasons which led the vigilance to report for cancellation of the panel. The cancellation order, therefore, itself suffers from the material defect as no reasons have been stated for cancelling the panel.

9. The respondents have also not taken a stand that the serious irregularities in the conduct of the said selection should not be disclosed in the interest of administration. The argument of the learned counsel for the applicants is also based on equity and principle of natural justice that after competing successfully in the examination in question and being empanelled they got a vested right on the promise made by the respondents in the notification of vacancies to appoint the selected candidates after successful training as Assistant Station Masters.

10. It has been further argued by the learned counsel for the applicants that no notice has been given to the applicants before cancelling the panel and the hearing is must so that the applicants could have placed their own stand. The reliance has been placed by the learned counsel for the applicants on B.P.Anand Raj Vs. K.S.R.T.C. Karnataka page 483 at page 486 para 6, where it is observed that the decision not to operate on the select list should be taken on a reasonable basis. Though, the order of cancellation was upheld, but only on the ground of valid reasons given that since 5 years had elapsed, from the date of publication of the select-list, preparation of fresh list of candidates

(13)

for making further appointments would be in the interest of Corporation. Reliance has also been placed by the learned counsel for the applicants on Subhashni Mahajan Vs. State of Punjab and Ors. reported in 1985 Vol.I SLR page 341 where, Punjab & Haryana High Court held that the principles of natural justice require that notice of hearing should be given before cancellation of the earlier order in favour of the petitioner. This authority does not apply to the facts of the present case. The authority is regarding the non-grant of selection grade, while in the present case it is selection for appointment.

11. The respondents counsel has raised certain technical objections regarding the verification of the application but it is not necessary to go into that technicalities when the application has been admitted and the principles of natural justice are being followed.

12. In view of what has been said and discussed above, the application is allowed and the order dated 24.11.1987 cancelling the panel is hereby quashed. The respondents are directed to operate the panel within three months from the date of communication of this order. The parties are left to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (Judl.) 14.1.90

P. C. Jain
(P.C. Jain)
Member (Admn.) 14.1.90