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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.C.A. 1059/86

Date of decision 10/5/1989.

Shri Misri Lal & Others

..Applicant(s)

Vs.

Union of India & Another

..Respondents

For the Applicants.

..Shri R.L. Sethi,
Counsel

For the Respondents

..Shri B.K.
Aggarwal, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. M.M. MATHUR, ADMINISTRATIVE MEMBER

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

JUDGMENT

(The Judgment of the Bench delivered by Hon'ble
Shri M.M. Mathur, Administrative Member)

The applicants, who had applied for the post of Carriage and Wagon Safaiwalas in the office of the Northern Railway Headquarters filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to allow them to join duty to the post to which they have been selected by ^a duly constituted Selection Board.

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2. The facts of the case in brief are that respondent No.2 (the Divisional Railway Manager) had notified a number of vacancies of Carriage and Wagon Safailwalas, Khalasis and other like vacancies in Grade-IV in Delhi Division in 1985. More than 7,600 candidates were interviewed by a Selection Board constituted for the purpose. A select list of 300 persons was prepared, approved, notified and displayed on the notice board of the office of respondent No.2 on 12.2.1985. The applicants were declared successful in the select list and they secured various positions in the merit list ranging from 26 to 277. It has been stated that the applicants were examined at the Railway Hospital, Delhi, Kishan Ganj and were declared medically fit. The applicants also produced the original of the Offer of Appointment, Attestation Forms, Original Railway Receipt of Rs.8/- as medical examination fee and other connected documents in February, 1986. The applicants were advised to await further instructions. Despite several representations, the applicants have not received any reply nor have they been appointed to the post for which they had been selected. The applicants, however, informally came to know that persons junior to them have been allowed to join duty, but they were not allowed to do so.

3. The respondents have contended in their counter affidavit that on receipt of complaints about irregularities in the selection, an investigation was conducted by the

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Vigilance Department. As a result of this investigation, it was decided by the Divisional Railway Manager that the unoperated portion of the select list should be scrapped. This order was issued on 13.2.1986. The respondents have denied that they advised the applicants to await further instructions. Offers of appointments had been issued to the first 80 in the panel on 8.1.1986. Those who completed the formalities and joined duty upto 30th June, 1986 were allowed to continue in service. Those who did not join by that date, have not been allowed to join.

4. As regards applicant No.1, it has been stated in the counter affidavit that posting orders for his joining duty at Bhatinda were kept ready before the panel was cancelled. However, he made representations through a Member of Parliament requesting that he should be accommodated in the Delhi area. Because of this representation, even though his position in the merit list was 26, some of his juniors had joined before 13.2.86, which was the crucial date. After that date, the respondents could not permit him to join either at Delhi or anywhere-
the of the panel.
else because of cancellation. The respondents have admitted that those who joined prior to the cancellation of the panel are continuing in service as only the unoperated portion of the panel has been scrapped. The respondents have also contended that there had been no discrimination, as alleged. The decision to cancel

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the panel was taken on valid considerations and it has been uniformly applied to all candidates who did not join upto the date of scrapping of the panel. In view of this, no rights of the applicants have been infringed.

5. We have gone through the records carefully and have heard the learned counsel of both parties. At the outset, the learned counsel of the respondents contended that the application is not maintainable in view of the provisions of Sections 20 and 21 of the Administrative Tribunals Act, 1985. This contention has not been raised in the counter affidavit filed by the respondents. Apart from this, in our opinion, this is a fit case in which the Tribunal should exercise its discretion and not to insist on the exhaustion of remedies available to the applicants under the relevant service law.

6. In the present case, the select list was cancelled after certain irregularities came to light. However, by 13.2.86, the respondents had appointed 80 persons to the post for which they had been selected, when it was decided to scrap the panel. In our opinion, the inclusion of a candidate's name in the select list will not confer on him any right of appointment. This does not, however, mean that the Appointing Authority has the power to pick and choose from the list. Whenever the appointments are to be made, the same will have to be in the descending order of the list. If at a particular point of time, the Appointing Authority stops making the appointments, the unlucky candidates cannot compel the making of such

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appointments. The Appointing Authority may, for good reasons, cancel the select list (vide Karnataka State Road Transport Corporation Vs. M.C. Midlagiryappa, 1983(1) SLR 106).

7. As the select list has been scrapped on the ground that certain irregularities came to light after vigilance investigation, we are of the opinion that the respondents have taken this action for good reasons. However, certain appointments have been made before these irregularities came to light and we do not consider it appropriate to hold that appointments already made were invalid. Persons who had already been appointed till 13.2.86 should, therefore, be treated as validly appointed.

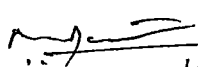
8. However, it is not clear whether the appointments of 80 persons had been made strictly in accordance with the descending order of the select list. In case, these appointments have not been made in accordance with the position of the persons in the merit list, the applicants have a valid grievance.

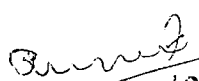
9. In the facts and circumstances of the case, we direct the respondents to consider the position of the applicants in the merit list and if persons who had figured lower than the applicants in the select list have already been appointed, the applicants also should be considered for appointment, notwithstanding the cancellation of the panel. The respondents should offer

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them appointments after verifying that they fulfil the necessary qualifications and that they are not in any manner benefitted by the alleged irregularities which led to the scrapping of the panel. The appointments will be subject to the availability of vacancies in 1985, but they will not be entitled to any back wages.

10. There will be no order as to costs.


(M.M. MATHUR) 10/5/88
ADMINISTRATIVE MEMBER


(P.K. KARTHA) 10/5/88
VICE CHAIRMAN(J)