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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

REGN.NO. D.A. 141/87.

DATE OF DECISION: 24.8.1992.

Shri Tara Chand & Ors. ... Petitioners.

Versus

Union of India & Ors. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioners. ... Shri Gyan Prakash,
Counsel.

For the Respondents. ... Shri O.N. Moolri,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioners seven in number have filed this petition complaining about their not having been included in the panel prepared for promotion by the process of selection for the Senior Draftsman Cadre in the scale of Rs.425-700 without any justification whatsoever. It is explained to us by Shri Gyan Prakash, learned counsel for the petitioners, that the posts are required to be filled up by selection and that the selection consists of a written test followed by a viva-voce. It was pointed out that it is only those who qualify in both the tests become eligible for being empanelled subject to their being on the basis of their merit within the number of vacancies. A written test was held in July 1976 and all the petitioners qualified in the same. As a matter of fact, 82 persons qualified in

that test. All of them were qualified for viva-voce. The petitioners were duly orally examined. It is thereafter that the panel was prepared as per Annexure 'C' dated 19.3.1978 in which the forty names are included. It is explained by the counsel for the respondents Shri Moolri that five persons were required to be treated as being qualified for promotion without taking their test having regard to certain situations and promises or assurances made earlier with which we are not concerned in this case. The panel was further extended by adding eight more names as per Order dated 1.10.1985 (Annexure 'L'). Further another four names were added in the same panel for the same select list by an order dated 14.4.1987. This includes petitioners 2 and 7 who are at Serial No.2 and 4 in the additional panel dated 14.4.1987.

2. So far as the petitioners 2 and 7 are concerned, there is no subsisting grievance as their names have been included in the panel. However, they have requested for the consequential benefits to be given to them. We shall discuss that aspect little later.

3. So far as remaining five persons are concerned, there is subsisting grievance about their not having been included in the panel.

4. The answer of the respondents is that the remaining five petitioners did not qualify themselves for inclusion in the said list by securing the minimum marks for that purpose.

They have taken the positive stand that there are still 10 vacancies available but there is none to be promoted as the entire panel has since exhausted. Since the petitioners did not qualify themselves, it is obvious that they cannot make any grievance about their not having been included in the panel.

5. The learned counsel for the petitioners Shri Gyan the contention of the respondent Prakash, however, maintained that we should not accept/that they have failed to qualify for inclusion in the panel. Learned counsel for the petitioners urged with considerable force that in the circumstances we should direct the respondents to produce the relevant records to satisfy ourselves about the principal averment of the respondents in this behalf. He invited our attention to the following statement occurring in Annexure 'B'. It appears to be a Note by an official described as SPO(Gr.) dated 28.12.1978 which reads:

"A panel of 40 dratsmen grade Rs.425-700(RS) was to be formed in the selection held during 1976 on the basis of vacancy position. Accordingly all the eligible 138 candidates were called for written test against the normal requirement of 160 candidates. 82 dratsmen qualified written test and were qualified viva voce test held in March, 1977. Finally 40 candidates were placed on the panel. Under the rules all the candidates who qualified in the written test and viva voce test cannot be placed on the panel. Only the candidates equal to the number of vacancies are to be placed on the panel."

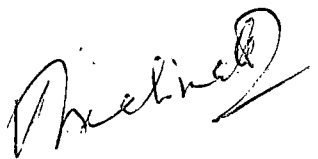
Relying on this notice, an argument was constructed to the effect that all the 82 candidates who had qualified in

the written test also qualified in the viva voce and that the panel could not include all of them as it has to be restricted only to the number of vacancies which were assessed as only 40. It is not possible to understand the language employed therein as conveying that all the 82 persons who had qualified in the written test also qualified in the viva voce test which was held in March, 1977. Besides, it is not clear if Annexure 'B' has been drawn by an authority who had the competence to make a declaration or had the required information in regard to the persons who had become qualified for inclusion in the panel. In the circumstances, we are not inclined to doubt the correctness of the averments made in the reply filed by the responsible officer of the Administration. There is a positive stand taken in the reply to the effect that the panel has exhausted as there is no qualified person available even though there are 10 vacancies yet to be filled up. The fact that there are 2 persons out of the petitioners who have been selected after this petition was filed further establishes the truth as well as bonafide of the respondents. In the circumstances, we are not persuaded to direct the production of the original panel or the result of the test to examine if the remaining five petitioners have also passed. We are inclined to accept the case of the respondents that the remaining five petitioners have failed in the test. Therefore, the question of their inclusion in the panel does not arise.

6. So far as the petitioners 2 and 7 who have been selected during the pendency of this petition to which we have adverted to earlier, are concerned, the question of granting consequential benefits does not arise. Their names were included in the panel because of the order of the superior authorities who enhanced the number of the panel. Hence, the decision in this behalf must be regarded as only prospective in nature. The petitioners 2 and 7 would get promotion and other benefits only prospectively in pursuance of the order that was made in their favour. Granting of promotion with retrospective date does not arise.

7. For the reasons stated above, this petition fails and is dismissed. No costs.


(I.K. RASGOTRA)
MEMBER (A)


(V.S. MALIMATH)
CHAIRMAN

SRD