

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 PRINCIPAL BENCH, NEW DELHI
 * * *

O.A. No. 279/1987

DATE OF DECISION 6.9.91

SH. VIJAY SINGH MEENA & ORS.

....APPLICANTS

VS.

UNION OF INDIA & ORS.

....RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANTS

....SH. B.S. MAINEE

FOR THE RESPONDENTS

....MS. SHASHI KIRAN

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

JUDGEMENT(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants, 14 in number, Fitter Khalasi, Northern Railway, Loco Shed, Laksar, District-Saharanpur belonging to Scheduled Tribe, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the orders dt. 19.11.1986 and 20.2.1987 (Annexure-A I and A-II respectively). By the aforesaid orders, the appointment of the applicants was cancelled without giving any reason

nor affording any opportunity of hearing to the applicants. The applicants claimed the following reliefs :-

- (i) That this Hon'ble Tribunal may be pleased to quash the impugned orders passed by the respondent
- (ii) That this Hon'ble Tribunal may be pleased to restrain the respondent from implementing the impugned orders.
- (iii) Any other or further relief which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
- (iv) The cost of the proceedings may also be awarded to the applicant.

2. The case of the applicants in brief is that the respondents advertised post of Class-IV employees in the Railways in terms of letter dt. 31.1.1984 (Annexure-A V) to fill up the vacancies reserved for Scheduled Tribes from the open market and the applications were invited in that regard from the members of the Scheduled Tribe community only. The applicants applied for the same and were selected/empANELLED in the panel declared on 19.6.1985 (Annexure-A IV). The applicants were appointed in different locosheds of the Northern Railway and specimen appointment letters have been filed (Annexure-A III). After their appointment, the applicants since the month of September, 1985, were working as Cleaner. However, by a letter dt. 19.11.1986 (Annexure-A I), the panel declared on 19.6.1985 and on the basis of which the applicants were appointed, was cancelled without giving any reasons nor affordin

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any opportunity to the applicants. In other letter dt. 20.2.1987 (Annexure-A II), the D.R.M. has written to Accounts Officer, Moradabad to pass the settlement bills of the applicants so that their services can be terminated. The applicants, apprehending termination of their services, approached under Section 19 of the Administrative Tribunals Act for cancellation of the aforesaid orders challenging the same as unconstitutional and arbitrary, being hit by Article-311 of the Constitution of India and the principles of natural justice. It is also said that the impugned orders are violative of Section 25 of the Industrial Dispute Act. In the earlier application, General Manager, Northern Railway, Baroda House was only impleaded as respondent, but subsequently, the application was got amended and Divisional Railway Manager, Moradabad was also impleaded. The D.R.M., Moradabad filed the reply contesting the application. They took the plea of misjoinder and non-joinder of parties. It is also stated that there were several serious irregularities which were committed in the preparation of the aforesaid panel which came to the notice of D.R.M., Moradabad while the panel was in its process of finalisation and it was decided to cancel the panel with the approval of D.R.M., Moradabad. But since the applicants had already been appointed and worked for a considerable time, as a gesture of sympathy, the applicants'

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services were not terminated and it was decided to retain them in service as substitutes with a clear stipulation that their services were subject to regularisation after screening. The applicants agreed to continue on this stipulation and are still working. The serious irregularities committed in the selection of the applicants for empanelment, inter-alia, have been the excessive calculation of vacancies for SC and ST, calculation of anticipated vacancies against the short-fall quota which can never happen and not subjecting them to the prerequisite Psychological Test. According to respondent, the shortfall is always the factor of the past and not of the future to be anticipated. The aforesaid memo of Railway Board of January, 1984 only refers to filling up the backlog vacancies lying on account of non-filling the post of ST category. Due to these irregularities, major penalty chargesheet has been issued to the Assistant Personal Officer, Shri Khairati Lal who was the officer responsible for the same. Since it was the correction of a mistake and irregularity having been committed, so the competent authority subsequently remedied that mistake by cancelling the said panel. According to respondents, there was no shortfall of Scheduled Tribe vacancy, but 20 vacancies were calculated against anticipated shortfall which was wrong. Not only this, mischievously two panels of 22 and 23 Scheduled Tribe candidates screened on

the same date, were got approved on two separate dates and when this fact came to the notice, the panel was scrapped and the concerned A.P.O. was taken up for departmental disciplinary proceedings. The Railway Head Quarter gave instructions vide Office Memo No.961-E/101/3/86/UEMU/E. Union dated 22nd December, 1986 whereby all the persons empanelled and working as substitutes should be discharged after following the provisions of I.D. Act, 1948. However, subsequently, this decision of retrenchment was reviewed and the applicants were allowed to continue as substitutes till regularisation in future subject to their fitness by the screening committee. In the said screening, only two persons, Shri Vijay Singh Meena (applicant No.1) and Shri Amar Singh (applicant No.14) turned up and they were regularised. The rest of the applicants did not turn up for screening in spite of the adequate opportunity given to them. In view of the above, it is stated in the reply that the application be dismissed as devoid of any merit.

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The main controversy in this case is 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. It is not disputed that there were special drive for S.T. Candidates and the applicants duly applied and were selected. The respondents in their reply do not challenge their selection nor any fraud is alleged to that but what has been said as a defence for the cancellation of the impugned panel is that certain irregularity in formation of the panel came to the notice of the Divisional Railway Manager while the panel was in its process of finalization. The respondents have also pointed that there was a wrong calculation of ST vacancies and they also denied that there was any heavy back-log of vacancies of S.T. category of loco cleaners. In fact, it has been stated in para 6 of the counter that there was no short fall of S.T. and only 20 vacancies were calculated against anticipated short fall which was wrong because short-fall always relates to past and not to future and thus whole process is of empanelment prepared on such selection could not be sustained. Further the respondents have also stated that the concerned Assistant Personnel Officer who was in-charge of this selection mischievously got two panels each of 22 and 23 S.T. candidates who were screened on the same day but got approved on the separate dates. It is

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also stated that the disciplinary proceedings are pending against the concerned Assistant Personnel Officer and in view of this fact in the interest of the departmental proceedings everything can not be made out in the counter covering the irregularities, omissions committed in the formation of the panel. The case of the applicants is that the posts were duly advertised in pursuance of the Railway Boards letter dated 30-1-1984 (Annexure V) and the applicants are duly selected according to the various circulars issued from time to time for selection of Class-IV category (Loco Cleaners). The applicants fulfilled all the requisite qualifications and after interview they were empanelled and after medical examination were given appointment. The cancellation of the panel therefore without giving them opportunity is arbitrary and is hit by Article 311(2) of the Constitution of India.

3. Firstly, we find that the administration itself did not terminate the services of the applicants, rather they were treated as substitutes and allowed to work on normal wages on the same posts, however, on the condition that they shall be screened again against the vacancies to be filled up. In fact the screening is required where

the persons are working casually and have not gone through the process of selection. When the applicants have already been selected and they were given appointment so the question of again screening them only because there were wrong calculations of vacancies by which some irregularities have been committed will be totally against rules. The Rules prescribe only one screening before selection and that has been gone through by the applicants. Thus the subjecting the applicants to the same procedure again will be against the rules.

4. In fact, the case of the respondents of cancelling the panel is that there has been wrong calculation of the vacancies by some interested staff of Personnel office advertised the posts and got the wrong panel prepared and approved by the competent authority. 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 treat the applicants as the substitutes to be regularised after screening.

5. In the case of Nirmaly Kumari & Anr. Vs. Delhi Administration & Anr. reported 1990 (1) SLJ CAT P 347 it has been held that empanelled candidate has a right to be appointed and they can not be by-passed by resorting to direct appointment by inviting fresh applications. In this authority the case of Ishwar Chand Singh Khatri Vs. Delhi Administration ATR 1987(1) CAT P.502 and case of Prem Prakash Vs. Union of India AIR 1984 SC 1831 has been followed. In the case of Prem Prakash the Hon'ble Supreme Court held as follows:-

"It is clear from this notification that if selected candidates are available from the previous list there should either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. The notification further shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates".

6. In the case of A.M.Rao versus Director, Defence & Anr. Andhra Pradesh High Court has considered a almost similar matter of provisional selection and cancellation, and it was held that an opportunity should have been given to such persons whose selection has been cancelled following the rules of natural justice. In the case of A.P.S.R.T.C. Vs. Labour Court, A.I.R. 1980 AP P.132 it has been held that right to public employment ^{one} is a new property right as such is entitled to constitutional protection. This file of A.P. was referred by the Hon'ble Supreme Court in State of Maharashtra Vs. Chandarbhan AIR 1983 SC P 803. Thus the 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 struck down.

7. The letter cancelling the panel also does not include any reason whatsoever. In the reply filed by the respondents only it is said that since proceedings are pending against one of the Assistant Personnel Officer so in the interest of the administration claiming privilege for not to press to disclose the irregularities in the process of selection and finalization of the panel because all such matters can not be expressed in writing. This is no excuse. In fact,

when an order is passed affecting third person particularly terminating his services or discharging him from employment, naturally there should be a reasoned order which could come to show that it was due to that particular reason, the services of the applicant has been terminated. The impugned order, therefore, is also bad on this account.

8. The respondents in their counter have stated that there was no back-log of the vacancies of S.T. category but still there has been another selection for Class-IV ST category just few months after the impugned order was passed. Annexure R-4 filed by the respondents goes to show that a panel of 103 candidates was prepared in July, 1987 while the panel from which the applicants were appointed was ordered to be cancelled on 19-11-1986. All this goes to show that the applicants could have been absorbed in some of the vacancies which had fallen vacant subsequent to their appointment. In fact, the applicants were asked to continue in their service as substitute against clear posts and they have been continuously working without any break so question of their subsequent screening does not arise at all. The order of forcing them subsequent screening is, therefore, not according to law and if some of the applicants have undergone this second screening that will not create estoppel against the remaining applicants.

9. In view of the above discussion we find that the impugned orders dated 19-11-1986 (Annexure A-1) and dated 20-2-1987 (Annexure A-2) are arbitrary, illegal and are therefore quashed. The applicants shall be deemed to be regularly selected and appointed in service. In the circumstances, the parties shall bear their own costs.

Signature

(J.P. SHARMA) 6(919)
MEMBER (J)

Signature

(D.K.CHAKRAVORTY)
MEMBER (A)