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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.1874/2004

New Delhi, this the 26th day of July, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Balram Singh, TTE,
C/o CIT Northern Railway,
Najibabad
(By Advocate : Shri A.S.N. Murthy for Shri S.N. Anand)

APPLICANT

VERSUS

Union of India : Through

1. General Manager,
Northern Railway,
Baroda House, New Delhi
2. Divisional Railway Manager,
Northern Railway,
Moradabad
3. Vijayant Kumar Sharma, STE,
Office of DRM, Northern Railway,
Moradabad

(By Advocate : Shri R.L. Dhawan)

RESPONDENTS

O R D E R (Oral)

By Mukesh Kumar Gupta, Member (J):

Challenge is made to communications dated 27.11.2003 and 21.04.2004 vide which, due to interpolation of Respondent No. 3's name in the panel at serial No.6-A, applicant, who was placed at serial No.42 in the said panel of selected candidates has been removed and his representation against the same was rejected, respectively. A direction is also sought to Respondents to restore his name at the assigned place in the panel dated 11.06.2003.

2. Admitted facts are that: a selection was held for the post of Head Ticket Collector/THE/COR in the grade of Rs.5,000-8,000/- for 51 posts (40 general, 8 ST and 3 SC). Written examination was held on 05.04.2003 and as a result of which, a panel of 50 persons had been declared vide communication dated 12.05.2003, wherein applicant's name was included at serial No.9 and Respondent No.3 at serial No.66. Applicant belongs to SC community while Respondent No.3 is a general candidate.

3. His grievance is that subsequently a viva-voce test was held and on 11.06.2003, a provisional panel was issued wherein he figured at serial no.42. It is contended that Respondent No.3's name did not find mention therein. Vide communication dated 27.11.2003 ADRM, Moradabad intimated that due to re-determination of seniority, name of Respondent No.3 had been interpolated at serial No.6-A of the panel dated 11.06.2003 and applicant's name is removed. It is stated that applicant's name figured at serial No.82 in the seniority list dated 29.07.1999.

Feeling aggrieved, he made a detailed representation dated 25.02.2004. However, the same was illegally rejected vide impugned communication dated 21.4.2004. Shri A.S.N. Murthy, learned counsel appearing for Applicant strenuously urged that action of Respondents in removing his name, which was empanelled after qualifying viva-voce test, was illegal, arbitrary and discriminatory. There was no justification for the said action particularly when the currency of the panel was two years, no prior notice was issued before taking the impugned action; Respondent No.3, who had not qualified the viva-voce test, was unduly favoured at the cost of an SC candidate, i.e. applicant herein; applicant holds unblemished service record and by dint of his own merit he qualified the examination without the benefit of any relaxed standard; his name had been removed without any rhyme or reasons.

4. Respondents 1 and 2 contested the claim laid stating that due to revision of seniority of Respondent No.3, his name has been interpolated at serial No.6-A in the provisional panel dated 12.5.2003 in accordance with the provisions of para 228 of IREM Vol. I. Consequently, applicant's name, who was the last amongst officials belonging SC community in the said provisional panel, has been deleted. Applicant's representation was carefully considered by the competent authority and rejected vide communication dated 21.4.2004. Respondents' action is in accordance with para 219(1) of IREM Vol. I.

5. By filing rejoinder, applicant reiterated contentions raised in the OA and made a reference to Railway Board's Circular No. 98-E(SCT)-1/25/14 dated 6.1.1999 to contend that selected candidates are required to be kept in the panel as per merit position.

6. We heard learned counsel for parties and perused the material documents and original records relating to selection process produced before us by Respondents.

7. At the outset, we may note that on a pointed query raised to applicant as to whether he challenged Respondents' action in amending the seniority list and placing Respondent No.3 at an appropriate place, which resulted in the review of panel dated 12.5.2003 or not, the learned counsel for applicant fairly pointed out that no such challenge had been made to the revised seniority list. Shri R.L. Dhawan, learned counsel for Respondents 1 and 2 vehemently contended that as per para 219 (1) of IREM Vol. I, normally a panel once approved is not cancelled or amended unless it is found subsequently that there were procedural irregularities and other defects and it was necessary to cancel or amend such a panel, which is to be done only after obtaining approval of the authority next higher to one that approved the panel. With reference to the record produced before us, it was pointed out that the panel issued earlier had been provisional and was approved by the ADRM while the approval of next higher authority i.e. DRM was obtained before issuing the impugned communication dated 27.11.2003. On perusal of statement for selection (viva-voce) for said post which was held on 06.06.2003 and 09.06.2003, we find that Respondent No.3 had secured 68.85% marks, while applicant had secured 65.80%. It is not in dispute that those who secured 60% marks were declared qualified. Mere declaration of "qualified" in examination is of no consequence, as one should find place within the notified number of vacancies. It is also not in dispute, as seen from the record also, that applicant was the last person belonging to SC community. Since Respondent No.3 earlier could not be included in the panel

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because of his lower position in seniority, but due to restoration of seniority, he was placed in between serial nos. 6 and 7 of the panel. A perusal of the panel shows that because of such an interpolation, one of the candidates belonging to SC community, who had been earlier included in the list of general candidates because of his merit, had to be pushed down to the list belonging to SC community, which resulted in applicant displacement. As we have already noticed that the notified vacancies were 40 for general and 3 for SCs. Applicant's name was undoubtedly at serial no.42 of the panel, as out of 40 general candidates, one person's name had not been cleared because of vigilance proceedings. In other words, instead of 51 vacancies the panel was for 50 candidates i.e. 39 General + 3 SC & 8 ST candidates. Because of such an interpolation, applicant had to be pushed down to 43, which in consequence became the reason of his deletion from main panel. At the cost of repetition, we may note that all the 8 candidates included below applicant in the panel en-bloc belong to ST community. It is not in dispute that there were 8 such vacancies notified for ST candidates and which had been filled under the principles of reservation. It is only some of the SC candidates whose names were included within the general candidates because of their merits. Since Respondent No.3's name had been included for vacancies notified for general candidates, one person from said SC community who was earlier placed with General category candidates had to be relegated to his SC community.

8. On bestowing our careful consideration to these aspects as well as on perusal of selection process undertaken by Respondents, we find no illegality and arbitrariness in undertaking such exercise. On perusal of the panel as well as seniority list dated 29.7.1999, we find that name of Narender Kumar and Bhoorey Lal appear at serial Nos. 27 and 28 in the seniority list and serial Nos. 6 and 7 of the panel. Applicant's name has been included in between these two officials. It is not in dispute that applicant's name in the said seniority list appears at serial No.82, while Respondent No.3's name was not shown therein. As we have already observed, it is due to re-determination of seniority of Respondent

No.3, there had been the necessity to revise the panel. In other words, Respondent No.3 is much senior to applicant in the revised and corrected seniority. Learned counsel for applicant lastly contended that no show cause notice was issued prior to revising the panel, which has civil consequences. Since there has been a breach of principle of natural justice, impugned action deserves to be quashed. Shri R.L. Dhawan, learned counsel for Respondents contended that no show cause notice was necessary as the panel was provisional in nature and moreover, Respondents have only rectified the mistake in seniority list, which in turn, placed Respondent No.3 higher in seniority list and revision of the panel was consequential in nature.

9. In our considered view, we do not find justification in applicant's contention, as the panel was provisional and it was so specified therein. Moreover, it is well settled law as held in ***Aligarh Muslim University & Ors. vs. Mansoor Ali Khan etc. [JT 2000 (9) SC 502: 2000(7) SCC 529]*** that there can be certain situations in which an order passed in violation of natural justice need not be set aside. Thus, in our view, in the above circumstances, the only conclusion that can be drawn is that even if the applicant had been given notice and he had mentioned this fact of inclusion his name in the provisional panel, that would not have made any difference and would not have been treated as a satisfactory explanation especially when the respondent No.3 is shown much senior to him. Thus, on the admitted or undisputed facts, only one view was possible. As such, in the circumstances of the present case, issuance of show cause notice would have been "useless formality". Moreover, applicant had not challenged the very basis, the revision of seniority. Under these circumstances and in view of the discussion made hereinabove, we find no merit in the claim laid and accordingly the OA lacks merit and is dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)

/PKR/


(V.K. Majotra) 26/11/06
Vice Chairman (A)