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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 726/92

DECIDED ON : 23.10.1992

Mahe sh Kumar & Others

... Applicants

Vs.

Union of India

... Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri S. K. Sawhney, Counsel for Applicants

Shri I. C. Sudhir, Counsel for Respondents

JUDGMENT (ORAL)

Hon'ble Shri P. C. Jain, Member (A) —

All the four applicants in this case were working as Claim Tracers in the scale of Rs.1200-2040 at the time they participated in the selection for the post of Assistant Claim Inspector (for short 'ACI') in the scale of Rs.1400-2300. Their names were also placed on the panel pursuant to the aforesaid selection. However, as they were not promoted, they are aggrieved by the action of the respondents in not promoting them inspite of being empanelled. They have prayed for a direction to the respondents (1) to operate the panel dated 19.3.1990 (Annexure A-1); (2) to extend the life of the panel till such a final decision is taken in the matter; and (3) to promote them and pay them wages for the post of Assistant Claim Inspector from the date these posts are said to have been illegally kept vacant by denying promotion to the applicants.

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2. The respondents have contested the O.A. by filing a return to which a rejoinder has also been filed by the applicants. As the pleadings in this case were complete, it was decided with the consent of parties to finally dispose of this case at the admission stage itself. Accordingly, we have perused the material on records and also heard the learned counsel for the parties.

3. Briefly stated, it is common ground between the parties that notice for holding a selection to make a panel of 17 ACIs in the grade of Rs.1400-2300 was issued on 10.11.1989 (Annexure A-2). Of these 17 vacancies, 2 were reserved for SC candidates, 4 for ST and the remaining 11 for general candidates. As a result of the written test ^{and viva voce} held, a panel of 22 candidates was declared on 19.3.1990 (Annexure A-1). The names of the four applicants in this O.A. are also included at s. Nos. 19 to 22 of the aforesaid panel. This notice specifically mentions that no ST candidates are available and that two general candidates have been taken subject to the approval from Railway Board for de-reservation. The first 17 candidates in this panel were promoted to the post of ACI and one Shri Bulaki Dass at sl. No. 18 is also shown to have been appointed to officiate on the post of ACI before the headquarters office of the Northern Railway wrote a confidential letter dated 18.1.1991 advising the Chief Claims Officer (II), Northern Railway not to promote any more candidates from the panel pending finalisation of the vigilance case (Annexure R-1 to the counter). So far there is no dispute between the parties. The dispute appears to have arisen on account of non-promotion of the persons empanelled at sl. No. 19 to 22 in pursuance of the instructions in the headquarters letter dated 18.1.1991, already referred to above. On this letter

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also there has been correspondence between the Chief Claims Officer and the headquarters office as is evident from the copies of the correspondence filed by the applicants as Annexures A-6, A-7, A-8, A-9 and A-10. In the last letter (Annexure A-10) dated 6.11.1991 from the Chief Claims Officer (II) to the Chief Personnel Officer, Northern Railway it stated that "To meet the ends of justice, it is essential that the remaining four Claims Tracers holding their positions from item No. 19 to 22 on the panel of ACIs may also be allowed to promote as such, of course, after fulfilment of other formalities i.e. vigilance/D&R clearance etc." The learned counsel for the applicants submitted that no decision on the aforesaid letter has been taken so far. It has also come in this correspondence that when the instructions issued by the vigilance branch in the letter dated 18.1.1991 (R-1) were taken up by the Chief Claims Officer (II) in that department they wrote back that the matter concerned the Chief Personnel Officer from whom instructions may be obtained.

4. The case of the respondents is three fold — firstly, that the panel was not operated after sl. No. 18 on account of the instructions received from the vigilance branch; secondly, that the currency of the panel has expired on 9.3.1992 and this cannot be operated now for the benefit of the applicants in this O.A.; and thirdly, that the panel of 22 person was approved and two general candidates were taken against the vacancies reserved for ST candidates subject to the approval of the Railway Board for de-reservation of those vacancies, but the Railway Board has not agreed for such de-reservation. They have, therefore, stated in their reply

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that the applicants do not deserve any relief and the O.A. may be dismissed.

5. The facts which emerge from the above averments are that the notice for selection issued on 10.11.1989 (A-2) clearly stated that the selection was to prepare panel of 17 ACIs, but even then a panel was approved of 22 persons. Nothing has been placed on record by either party to show as to how and why five more names were included in the panel though there were only 17 vacancies and the notice for selection required a panel of only 17 persons. Be that as it may, the panel of 22 was approved, obviously after taking the approval of the competent authority, and till date it is not shown to have either been cancelled or modified. Thus, we have to proceed on the basis that the panel of 22 vacancies approved by the respondents was in accordance with their rules/instructions. The applicants do not belong to the category of ST candidates and as such they cannot be held in law to be entitled to be appointed against vacancies reserved for STs unless such reserved vacancies are de-reserved under the orders of the competent authority in accordance with the Government instructions on the subject. We have not been shown by any material placed on record or otherwise that two vacancies reserved for STs and which were taken into account in the panel of 22 persons were de-reserved and were consequently available for being filled up by general category candidates. This point we shall keep in view while deciding the final orders to be passed in this case in the paras to follow.

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6. As per provisions of Para 220 of the Indian Railway Establishment Manual Volume 1 (Revised Edition - 1989), panels drawn by the selection board and approved by the competent authority shall be current for two years from the date of approval by the competent authority or till these are exhausted, whichever is earlier. As the operation of the panel after sl. No. 18 came to be stayed under instructions/advice received from the headquarters office, this aspect also would need to be kept in view while deciding the relief to be allowed in this case.

7. In the light of the foregoing discussion, we are of the view that this O.A. deserves to be allowed partly in terms of the following directions :-

The applicants whose names appear at Sl. No. 19 to 22 on the panel for the post of ACIs notified on 19.3.1990 shall be considered for appointment to the post of ACIs with effect from the date a vacancy for general category candidate became within two years from the date the aforesaid panel was approved by the competent authority, after accommodating sl. No.18 against first such vacancy and thereafter considering the cases of the applicants in the order in which their names appear in the panel, but the two posts which were reserved for ST candidates and which were taken into account while preparing the panel, shall not be considered for the above purpose if these posts were not de-reserved under the orders of the competent authority issued before the expiry of the panel. The applicants considered for appointment in terms of the direction as above shall, however, be entitled to pay etc. of the post of ACI only

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from the date of such appointment and not with retrospective effect. These instructions shall be complied with by the respondents as expeditiously as possible but preferably within a period of two months from the date of receipt of a copy of this order. On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

J. P. Sharma
(J. P. Sharma) 23.10.92
Member (J)

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