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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. No. 2317/93.

New Delhi this the 5th day of August, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

Shri Bharat Kumar Sharma,
E-32, Ganga Vihar,
Near Gokulpuri,
Delhi.

...Applicant.

By Advocate Shri B.S. Mainee, Counsel.

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
 2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
 3. The Sr. Divisional Electrical Engineer,
EMU Car Shed, Northern Railway,
Ghaziabad.
- ...Respondents.

By Advocate Shri H.K. Gangwani, Counsel.

ORDER (ORAL)

Shri N.V. Krishnan.

The applicant in this case is aggrieved by the fact that though his name has been included at Serial No. 89 in the panel of names for recruitment of Electrical Khalasis in the grade Rs.750-940, finalised on the basis of the results of an examination vide the Annexure A-2 letter dated 21.9.1990, yet, instead of offering him appointment, the respondents have now initiated steps for fresh recruitment to the same category of posts by the letter dated 10.8.1993 (Annexure A-4). Being aggrieved by this action, the O.A. has been filed to direct the respondents to absorb the applicant as Electric Khalasi against existing vacancies which are sought to be filled up by making fresh recruitment.

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2. It is admitted that persons upto Serial No. 79 have been appointed. Vacancies still exist. Instead of appointing persons from the same panel, the respondents have now initiated steps to make fresh recruitment. It is contended that so long as Annexure A-2 panel which contains 123 names is alive and so long as the persons mentioned therein have not been appointed, the respondents cannot initiate fresh steps to recruit against these posts separately. Learned counsel for the applicant relies on the judgement of the Supreme Court in Prem Prakash Vs. Union of India (AIR 1984 SC 1831) in support of this contention.

3. The respondents have filed a reply contesting this claim. They state that during the currency of the panel, only 79 persons could be appointed. A request for extending the life of the panel has been rejected by the Headquarters. Further, it is urged that the mere inclusion of one's name in a selection panel does not give any vested right and that the proceedings to make fresh recruitment cannot be assailed on any reasonable ground.. It is also pointed out that the Annexure A-4 notice is not for fresh open market recruitment. It is only a notice to other administrative units to forward applications of ITI trained casual labours for absorption in EMU Car Shed, Ghaziabad.

4. In the rejoinder, it is pointed out that though the Annexure A-1 dated 29.2.1990 notice did not indicate the number of vacancies to be filled up, yet it is clear that there were 150 vacancies. The rejoinder states as follows:

"...In this regard, it is respectfully submitted that the respondents had calculated 150 vacancies for which selection was held but before the selection was held 27 persons had been transferred from various other Units to EMU Shed Ghaziabad and as such number of vacancy was reduced from 150 to 123 and accordingly a select list of 123 had been prepared in the ord

of merit. The General Manager had accorded his approval for making recruitment of 150 Khalasis vide letter dated 12.1.1990. A copy of which is Annexed hereto and marked as Annexure 'X'.

The memo of the General Manager dated 12.1.1990 to the Divisional Railway Manager, Northern Railway, New Delhi, referred to therein reads as under:

"Sub: Recruitment of Khalasi for POH of EMU coaches in the EMU Car Shed, Ghazibad.

Ref: DRM/DLI's D.O. letter No. 232-Elec/EMU/60/1 dated 5.12.1989.

On receipt of proposal under DRM's D.O. letter referred to above for recruitment of ITI qualified persons from the open market against 150 vacancies of Khalasi in the EMU Shed, Ghaziabad, the case was put up to the competent authority for obtaining sanction for inducing fresh faces from open market.

The G.M. has been pleased to accord his approval for making recruitment of 150 Khalasi in the EMU Car Shed, Ghaziabad. While making recruitment from open market of ITI qualified persons, the procedure laid-down in Railway Board's letter No.E (NG)II/83-RC-2/39 dt. 31.12.83 circulated under this office letter NO.220E/112(1) dated 16.1.1984 & P.S. No.9408 may also be followed for giving preference to the sons/immediate dependents of the Railway employees in the manner prescribed in this P.S.

Even though the panel may be formed for 150 posts, the applications may be invited without mentioning the number of vacancies as/posts required for POH of addition EMU coach holding have yet to be sanctioned." (Emphasis supplied)

Thus, there was a direction not to mention the number of vacancies. But, 150 were the ascertained vacancies. 27 were filled up by transfer. Therefore, 123 vacancies remained and a panel equal to that number was proposed. Therefore, the applicant, who is at Serial No. 89, ought to have been appointed.

5. No reply to this rejoinder has been filed though new facts were brought on record. The learned counsel for the respondents points out that the life of this panel (i.e. one year) had already expired. Therefore, it was necessary to prepare a fresh panel. He also relies on the judgement of the Supreme Court in State of Bihar Vs. Secretariat Asstt. Successful Examiness Union, (1994 SCC(L&S) 274) to contend that the inclusion of applicant's name in the panel gives him no right to appointment at all.

6. We have carefully considered the rival contentions.

7. Inasmuch as Annexure 'X' letter dated 12.1.1990 is not denied by the respondents - indeed, the learned counsel for the respondents states that such a letter was issued - it is clear that the total number of vacancies - including anticipated vacancies - have been ascertained at 150. There is a specific direction not to mention the number of vacancies in the advertisement for reasons mentioned in the last para of that letter, namely, that the 86 number of posts required for Periodical Overhaul of additional EMU Coach holding have yet to be sanctioned.

8. We have considered whether the fact that 86 posts were yet to be created - as stated in the Annexure 'X' letter - has any bearing on this case, though none has been pleaded or argued. If this is taken note of, the clear vacancies out of 150 are only 64. Yet, respondents have admittedly given appointment to persons upto S.No. 79 in the panel. Besides, 27 persons have been appointed by transfer, as alleged in the rejoinder which has not been rebutted, taking the appointments made to 106. This indicates that the new posts had, therefore, been created so that the anticipated vacancies remain unchanged at 150.

9. It appears that a panel has been prepared for 123 vacancies, only for the reasons stated in the rejoinder

which have not been rebutted - viz., that 27 vacancies have been filled by transfer from other establishments. We are, therefore, satisfied that advertisement was issued for filling up 123 vacancies though not so stated in Annexure A-1 and a panel of 123 persons was prepared. 79 persons have been appointed. Therefore, there are 44 vacancies. It is in this circumstance that we have to consider whether the applicant has any right to claim that until he is appointed to one of the 44 vacancies the respondents have no right to proceed with fresh recruitment in respect of these 44 vacancies.

10. We have seen the judgement of the Supreme Court in State of Bihar (Supra). In that case, an advertisement was issued in 1985 inviting applications for the posts of Assistants falling vacant upto the year 1985-86. The examination was held in November, 1987 but the result was published in the year 1990. Earlier, the number of vacancies existing then was announced on 25.8.1987 as 357. Out of the successful candidates, 309 candidates were given appointments. For the rest, those who scored 50% or more were empanelled and were made to wait for the release of further vacancies. As the further vacancies were not notified, the appointments could not be made from this waiting list. Thereupon, the empanelled waiting list candidates approached the Patna High Court and the High Court gave a direction to the respondents to appoint them not only to the vacancies available upto the date of publication of the result, i.e. July, 1990, but also to the vacancies arising upto 1991. It is in these circumstances that the Apex Court held that only the vacancies upto 31.12.1988 shall be filled from the panel prepared on the basis of the 1987 examination. For the vacancies thereafter, a fresh advertisement shall be made for recruitment. In that context the following observation was made:

"It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary".

11. That case is distinguishable. Normally, the panelists could have had a claim for appointment only against the 85-86 vacancies. However, as the examination was held only in 1987, the Supreme Court held that vacancies upto 31.12.1988 (i.e. anticipated vacancies upto the end of next year) could also be filled up from the panel, but not the vacancies thereafter. The panelists therein made a claim for appointment to the vacancies which arose upto the date the result was announced in 1990. The High Court allowed this and also directed that even vacancies upto 1991 be filled. This was struck down by the Supreme Court. In the present case, we have concluded that there were 123 ascertained vacancies and a panel of 123 persons was also prepared. It is true that inclusion in a panel does not necessarily give a right to appointment. For, the posts may be abolished or they may be kept vacant, or if there was any fraud in the preparation of the panel, the panel itself may be cancelled. That is not the issue in this case. The issue is whether without appointing the persons in the panel to the vacancies, can the respondents go in for a fresh selection? That has been decided in Prem Prakash's case (Supra). The fact that this case has not been referred to in the State of Bihar case is significant and establishes that the issues decided therein are different.

12. Prem Prakash case arose out of the certain appointments made to the Delhi Judicial Service. The Supreme Court

had to consider a similar issue in that case as in the present O.A. In that context, it was noticed that the Ministry of Home Affairs had issued a circular on 8.2.1982 to which a reference has been made in para 15 of that judgement. That circular was issued to clarify the validity period of a panel of selected candidates. The following clarification was issued:

"The matter has been carefully considered. Normally recruitment, whether from the open market or through a Departmental Competitive Examination, should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future: in case names of selected candidates are already available there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already in the list of selected candidates awaiting appointment. Thus there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies either by the method of direct recruitment or through a Departmental Competitive Examination.

Once a person is declared successful according to the merit list of selected candidates which is based on the declared number of vacancies the appointing authority has the responsibility to appoint him even if the number of the vacancies undergoes a change after his name has been included in the list of selected candidates. Thus where selected candidates are awaiting appointment recruitment should either be postponed till all the selected candidates are accommodated or alternatively, intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment from a fresh list from the subsequent recruitment or examination".

Considering this circular, the 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".

13. In this view of the matter, we are satisfied that it is the ratio of Prem Prakash's case (Supra) that will apply to the situation here. In the circumstances, the applicant is entitled to a declaration in this case.


14. Therefore, the objection of the respondents that the life of the panel had expired after one year has no legal basis. The panel prepared equal to the number of declared vacancies will continue to be operated, until it is exhausted.

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15. The other contention that the Annexure A-4 is not a notice for direct recruitment and cannot be treated as objectionable has no force. No doubt, it is not for making direct recruitment. But it is, no doubt, for making recruitment of internal candidates to the vacancies for which the panel was prepared. That cannot be done as the panelists have a right to be appointed to these vacancies in preference to others.

16. For these reasons, we allow this application with a direction to the respondents to consider the applicant for appointment to one of the vacancies that remain out of the 123 vacancies, referred to earlier, within a period of two months from the date of receipt of a copy of this judgement. We also issue a general direction to the respondents that they shall not proceed with the recruitment initiated by the Annexure A-4 letter dated 10.8.1993 to fill up the post of Khalasis in the grade Rs.750-940 (RPS) in EMU Car Shed, Ghaziabad until they first appoint the persons in the panel at Annexure A-2. We, however, make it clear that it is open to the respondents to initiate fresh recruitment to the vacancies over and above the 123 vacancies for which the panel at Annexure A-2 was prepared.

O.A. is disposed of as above.


(C.J. ROY)
MEMBER(J)


5.8.94
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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