

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ALLAHABAD THIS THE 29TH DAY OF JULY, 2005.

ORIGINAL APPLICATION NO. 169 OF 2005.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. D.R. TIWARI, MEMBER (A)

1. Vinod Kumar, S/o Sri Bhola Singh.
2. Rakesh Kumar Singh, S/o Late B.N. Singh.
3. P.K. Gupta, S/o Sri Shiv Govind.
4. A.K. Shukla, S/o Sri Ashwani Kumar Shukla.
5. B.K. Rawat, Staff no. 11604,
6. Vinod Rathore, S/o Sri Shyam Lal Rathore.

.....Applicants

(By Advocate : **Shri V. Budhwar**)

VERSUS

1. Union of India through the Secretary, Ministry of Railway, New Delhi.
 2. General Manager (P), Diesel Locomotive Works, Varanasi.
 3. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.
 4. Sri B. Ram Staff No. 03652.
 5. Sri J.P. Singh, Staff No. 07115.
 6. Sri Kailash Nath, Staff No. 04961.
 7. Sri S.S. Banerjee, Staff No. 01703.
 8. Sri B. Sharma, Staff No. 01690
 9. Sri R.L. Batlar, Staff No. 02540
- All posted as Junior Engineer-I, in Diesel Locomotive Works Varanasi.

.....Respondents

(By Advocate : **Sri A.K. Gaur**)



Alongwith

Original Application No. 131 of 2005

1. Vijai Shanker, S/o Sri Ram Lakhan.
2. Lal Bhadur, Staff No. 03996.
3. Umesh Chandra Asthana, Staff No. 11747

.....Applicants

By Advocate : Sri V. Budhwar

Versus.

1. Union of India through the Secretary, Ministry of Railway, New Delhi.
2. General Manager (P), Diesel Locomotive Works, Varanasi.
3. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.
4. Sri Ram Naresh, Staff No. 07582.
5. Sri Dharendra Kumar, Staff No. 10974.
6. Sri G.P. Bhartiya, Staff No. 03111.
7. Sri Vidyarthi Sharma, Staff no. 05168

All Posted as Junior Engineer-I in Mail Wright Trade,
Diesel Locomotive Works, Varnasi.

.....Respondents

By Advocate : Sri A.K. Gaur

Alongwith

Original Application No. 135 of 2005

1. Lalta Prasad, S/o late Pancham.
2. B.P. Singh, S/o Sri Ram Bahel Singh.
3. A.S. Vatsa, S/o Sri Rajendra Kumar
4. Sudhir Kumar, S/o Sri Ramanand Prasad

.....Applicants.

By Advocate : Sri V. Budhwar.

Versus.

1. Union of India through the Secretary, Ministry of Railway, New Delhi.
2. General Manager (P), Diesel Locomotive Works, Varanasi.



3. Chief Personnel Officer, Diesel Locomotive Works,
Varanasi.

4. Sri Noval Khalko Staff no. 03868, presently posted as
Junior Engineer-I in Diesel Locomotive Works, Varanasi.

.....Respondents

By Advocate: Sri A.K. Gaur

ORDER

BY MRS. MEERA CHHIBBER, MEMBER-J

All the aforesaid three O.As are identical and common as all the applicants are aggrieved by the common order dated 16.2.2005 passed by the respondent no.3 whereby new panel has been declared in supersession of the earlier panel wherein the names of the applicants were included. Therefore, all the three O.As have been heard together and are being disposed of by a common order. For the purposes of narrating the facts, O.A. no. 169 of 2005 is taken as lead case. As far as O.A. no. 331/05 is concerned, though it is in continuation of three O.As, but separate order is being passed in this very judgment.

2. In O.A. no. 169 of 2005, there are six applicants, in O.A. no. 181 of 2005, there are three applicants and in O.A. no. 185 of 2005, there are four applicants.

3. Brief facts as stated by the applicants that on 25.2.2004, a notification was issued for promotion to the post of Section Engineer in the scale of Rs. 6500-10500/- as per the modified procedure and in the said panel, the names of all the applicants were figured. For example, applicants in O.A. no. 169 of 2005 figured at sl. 10 to 16 (page 102). The applicants were also given

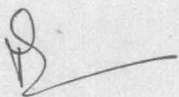


posting orders on 4.3.2004 and 13.5.2004 (page 105-106), applicants in O.A. no. 181 of 2005 figured at sl. No. 10 to 12 and 14, while rests of the applicants at Sl. No. 2 and 3 at page 109-110. It is, thus, submitted by the applicants' counsel that all the applicants had taken charge of the promotional posts as Section Engineer, but all of sudden, the respondents issued a notification dated 16.2.2005 in supersession of the earlier panel dated 25.2.2004 as per the modified procedure, but in this panel, none of the applicants' name figured (page 36 -37). It is against this notification that the applicants came to this Tribunal by filing the O.As as mentioned above.

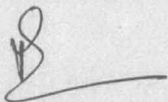
4. It is submitted by the counsel for the applicants that once the applicants were given promotion, their panel could not have been cancelled or superseded without putting them on notice as that would be violative of the principle of natural justice.

5. The counsel for the applicants in support of their case, has relied upon the following decisions:-

- (i) Jaswant Singh Vs. State of M.P. 2002(9) SCC 700.
- (ii) A. Manik Rao Vs. Director, Defence Metallurgical Research Laboratory, Hyderabad & Another, 1985 (1) SLR 165.
- (iii) Tagin Litin Vs. State of Arunachal Pradesh & Others (1996) 5 SCC 83.
- (iv) Shrawan Kumar Jha & Others Vs. State of Bihar & Others, 1992(6) SLR 718.



6. While the counsel for the respondents submitted that the O.As call for no interference as while implementing the scheme of restructuring Selection Committee, who conducted the selection on the basis of scrutiny of service record and Confidential report prior to 20.2.2004 considered 'Average' grading in Confidential report for the last three years, whereas the committee who conducted the selection after 20.2.2004 considered confidential report of the employees for the last three years as per the marks given on the basis of Average, Good, Very Good or Outstanding. It is further stated in the Counter reply that due to adoption of two procedure for implementing same scheme of restructuring, eligible staffs were deprived of such benefit of restructuring illegally in violation of the Railway Board's letter dated 8.10.1993. Therefore, respondents have rightly issued the notification dated 16.2.2005 in supersession of the earlier panel dated 25.2.2004. It was submitted by the counsel for the respondents that since they only rectified their mistake, there was no need to issue any show cause notice to the applicants. He invited our attention to the Annexure CA-II i.e. Railway Board circular dated 6.4.2004 wherein, it was made clear that while implementing the restructuring on the basis of the above procedure, instructions contained in Board's letter dated 8.10.93 should be kept in view, and the Railway Board's letter dated 8.10.93 clarified that the employees who are graded 'Average' in C.R. should not be denied the benefits of restructuring only on account of their average reports because the average report itself does not mean unfit for promotion(Annexure CA-3). In support of his contention, that



no show cause notice was required to be given to the applicants, ~~He~~^{he} has relied ~~upon~~^{on} the following decisions, which are as under:-

- (i) Vinod Kumar Mani Tripathi & Others Vs. Union of India & Others 2001 (1) AWC 395
- (ii) State of Punjab & Others Vs. Ram Lubhaya Bagga & Others (1998) 4 SCC 117.
- (iii) Pritam Singh & Others Vs. Union of India & Others 1985 Supp SCC 618.
- (iv) Indian Council of Agricultural Research & Another Vs. T.K. Suryanarayan & Others (1997) 6 SCC 766.
- (v) Union of India & Others Vs. Tarun Kumar Singh & Others 2004 SCC (L&S) 316.
- (vi) Arun Kumar Chatterjee Vs. S.E. Railway (1985) 2 SCC 452.
- (vii) National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman & Others 1992 Supp (2) SCC 481.

On the basis of the aforesaid judgments, ~~the~~ counsel for the respondents prayed that the O.As may be dismissed as no show-cause notice was required in these circumstances.

7. We have heard both the counsel and perused the pleadings as well.



promotional post, their empanelment could have been cancelled without putting the applicants on notice and without following the principle of natural justice. All the judgments referred to by the respondents' counsel are on the point when the selection process itself was cancelled due to irregularities or mass malpractice having been adopted in the examination. It was in those circumstances that the Hon'ble Supreme Court has held that while quashing the selection procedure, there was no need to issue show cause notice to all the persons who had appeared in the examination. Such a proposition cannot be disputed because at the stage of process of selection, no candidate has any indefeasible right to be either appointed or promoted as already held by the Hon'ble Apex Court. In some of the judgments, it has been held that the Court cannot give direction to the respondents when it was informed to the Court that similarly situated persons were given appointment under some wrong motion. ~~Again~~ nobody can dispute that proposition. The next decision relied upon by him is on the point that wisdom of policy decision cannot be questioned by the Court in the judicial review. Once again, that is not the point involved in the present O.A. Therefore, all the judgments relied upon by the counsel for the respondents would have no application in the present set of facts because the applicants herein, were not only empanelled, but the panel was executed also inasmuch as all the applicants were given posting orders also and they have already joined on the promotional post way back. Once applicants were empanelled and given posting orders, which were already given effect to, naturally a right accrue in favour of

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the applicants to hold those posts. If for some reasons, respondents felt that the promotion was given to the applicants wrongly, the only procedure available to them was to pass appropriate orders after following due process of law because the effect of issuing the impugned notification would be that the applicants would be deprived of their promotion inasmuch as in the impugned notification, none of the applicants' names figured and it was stated to have been issued in supersession of the earlier panel, therefore, this would amount to depriving them of their accrued right, which could not have been taken away without putting them on notice. More-over once panel was executed in merged into promotion order, therefore only promotion order could not have been cancelled after giving notice to the individuals and panel above could not have been superseded as done by the respondents. Our view finds support with the decision of the Hon'ble Supreme Court in the case of Shridhar Vs. Nagar Palika, Jaunpur (supra) wherein it was held that the order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector. That right could not be taken away without affording an opportunity of hearing to him. Similarly in the case of Jaswant Singh (supra), the appointment of the appellant was cancelled on the ground that the prescribed procedure was not followed while making the appointment, but since it was cancelled without following the principle of natural justice, the cancellation order was set-aside. The same principle should have been followed in the case, in hand, because all the applicants had joined their promotional posts, therefore, a right had accrued in their favour, which

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could not have been taken away without following principles of natural justice. It is settled law that only order which has civil consequences cannot be passed without followed the principles of natural justice. Apart from the above judgments mentioned above, it is seen that even in para 228 of the IREM Vol. I, which was relied upon by the counsel for the respondents. It is stated that incase Railway Servant is found to be erroneously promoted/appointed to a post in a substantive capacity, procedure prescribed in Board's letter dated 23.7.1954 for rescinding the irregular confirmation of a railway servant concerned should be followed and only thereafter the railway servant should be brought down to the position which he would have held for the erroneous promotion /appointment by the orders as mentioned above. Perusal of this paragraph makes it absolutely clear that even as per para 228, the persons who are said to have been given erroneous promotion, would be brought down only after following the procedure prescribed in the Railway Board's letter dated 23.7.1954. Therefore, it is not correct on the part of the respondents to state that they could have cancelled the panel of the selection already given effect to without following due process of law, therefore, respondents' contention that there was no need to issue show cause notice is rejected.

9. In the instant case, admittedly, principle of natural justice have not been complied with while issuing the impugned notification dated 16.2.2005. Therefore, the

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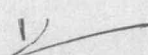
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notification dated 16.2.2005 cannot be sustained in the eyes of law to the extent it superseded the earlier panel. We are informed that applicants continued to hold the posts of Section Engineer by virtue of interim orders, therefore, they shall continue to hold the said post till some others are passed in accordance with law. We would, however, hasten to add here that we are deciding these O.As only on technical grounds for not having followed the principles of natural justice. We have not gone into the correctness or otherwise of the reasons given by respondents for canceling the notification. All those points are left open even if, respondents have valid reasons for rescinding the promotion of the applicants, but nevertheless, it is settled principle of law that when ever an order is passed, which has civil consequences, principle of natural justice must be followed. Therefore, the notification dated 16.2.2005 is quashed and set-aside to the extent it superceded the panel dated 25.2.2004 on this ground alone. However, liberty is given to the respondents to pass appropriate orders after following due process of law, if they so desire.

10. In view of the above discussions, all the ³ O.As are partly allowed. Parties are directed to bear their own costs.

OA No. 331 of 2005

1. Vinod Rathore, S/o Sri Shyam Lal Rathore.
2. Rakesh Kumar Singh, S/o Late B.N. Singh.
3. P.K. Gupta, S/o Sri Shiv Govind Gupta.

4. B.K. Rawat, Staff No. 11604.
5. Vijai Shanker, S/o Sri Ram Lakhani
6. Lal Bahadur, Staff no. 03996
7. Lalta Prasad, S/o late Pancham.
8. B.P. Singh, S/o Sri Ram Bahel Singh.
9. A.S. Vasta, S/o Sri Rajendra Kumar Singh.
10. Sudhir Kumar, s/o Sri Ramanand.

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3. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.
4. Deputy Chief Personnel Officer (Headquarter) Diesel Locomotive Works, Varanasi.

.....Respondents

By Advocate : Sri A.K. Gaur

11. This O.A. has been filed by the same applicants who had earlier filed O.A. Nos. 169, 181 and 185 of 2005. This O.A. was filed for challenging the notifications dated 10.3.2005 and 14.3.2005 whereby written examination was sought to be conducted for the same post of Section Engineer in the pay scale of Rs. 6500-10500/-. Applicants had filed this O.A. on two grounds viz. they were already selected/promoted as Section





Engineer, therefore, respondents could not have asked the applicants to appear again in written test for same posts as these were required to be filled by modified procedure as these posts were filled under restructuring scheme. More-over the entire issue is sub-judiced in earlier O.As as they have already challenged the panel whereby their select panel was superseded.

12. Respondents on the other hand have clarified that some vacancies were available in the cadre of Section Engineer Grade Rs. 6500-10500/- after implementing the restructuring scheme, therefore, they were required to be filled by normal selection procedure and since applicants were reverted after issuing panel dated 16.2.2005, they were also called to appear in the trade test (written). Applicants had sought stay, but this Tribunal passed the following interim order:-

"..... Heard on the question of interim relief. Selection process pursuant to the impugned notifications dated 10.3.2005 and 14.3.2005 may go on and may even be concluded in accordance with law but the selection shall not be given effect to till the next date of listing."

Accordingly, selections have been held and out of 10 applicants, only two applicants have been empanelled viz. Sri Lal Bahadur and Sri Sudhir Kumar, others have not qualified. They have, thus, prayed that the O.A. may be dismissed and they may be permitted to give effect to the selections made as their production work is getting affected.

13. Today, when the matter was called out, counsel for applicants submitted this O.A. has become infructuous and he is not pressing the same in view of the stay granted in earlier

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O.As and the fact that these posts are outside the restructuring scheme.

14. In view of the facts as explained by respondents, this O.A. is dismissed. Respondents are permitted to give effect to the selection already made. No costs.