RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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(Registration (O.A.) No.500 of 1986

Mohd. Asfaq and others ..... Applicants.

Versus

Union of India & others ..... Respondents.

connected with

Registration (O.A.) No.206 of 1987

Ram Kumar Shukla & others ..... Applicants.

Versus

Union of India & others ..... Respondents.

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Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

The above applications have been received under Section 19 of the Administrative Tribunals Act XIII of 1985. In Original Application No.500 of 1986 there are seven applicants while in Original Application No.206 of 1987 there are 124 applicants. In both the applications orders No.DCME/704/Pt.V III, dated 5.5.1986 and 12.9.1986 have been challenged. The matter being similar on point of law/facts both the cases are being dealt with together and the decision will apply to both of them.

2. Briefly stated the subject is that the applicants were duly selected and empanelled to be appointed to the post of Casual Khallasis vide letter dated May 22,1984 which was subsequently cancelled vide order dated 3.1.1985 and simultaneously certain

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posts of Khallasis were advertised to be recruited against which a Writ Petition No.590 of 1985 was filed before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. On the filing of the aforesaid writ petition the fresh recruitment,which was advertised, was postponed, but the respondents made the selections subsequently and declared a panel of successful candidates on 12.9.1986 and thus the applicants in the aforesaid two connected applications did not get appointed. The applicants had been empanelled as a result of applications invited for formation of a panel of Casual Labour Khallasis on 19.8.1983 and after they had pass through the selection procedure a panel was declared on 22.5.1984 and as they were awaiting for appointment this panel was cancelled on 3.1.1985. No reasons were disclosed for the cancellation. The applicants have claimed that since they were first empanelled they should have been appointed first. They represented on these grounds to the respondents on 21.6.1985. In the writ petition that was filed in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, the respondents had stated that due to the ban/filling on of the vacancies as notified by the Railway Board's letter No.E(G)84/RC 2-1, dated 15.3.1984 the selected candidates could not be ~~empanelled~~ appointed. A letter was also received from the Railway Board on 7.6.1984 freezing the strength of Casual Labours as on 1.1.1984. Therefore, the panel was declared as irregular and was cancelled. The applicants' case is that when the respondents are going to make regular appointments to the post of Khallasis,since they have been already empanelled after due selection,they had a right for

absorption against the vacancies of Khallasis after being screened by the Screening Committee on completion of 120 days, ~~and~~ they ~~would~~ have become entitled for such an absorption. Now the applicants have become over age and they have no other alternative employment or means of livelihood. The applicants have further said in their application that civil rights had accrued to them and the same should not have been taken away without proper and reasonable opportunity having been ~~shown~~ given to them. They have, therefore, sought reliefs for setting aside the notification dated 5.5.1986 and the panel dated 12.9.1986 and for passing appropriate orders directing the respondents to make appointments on the post of regular Khallasis from the panel of candidates ~~annexed~~ announced on 22.5.1984.

3. The respondents have opposed these applications on the grounds that the notification issued on 5.5.1986 was for inviting applications for regular selection of Khallasis. They have said that the applicants had applied against a notification inviting applications for the formation of a panel of Casual Khallasis at the rate of Rs.10/- per day. The date of notification is 20.1.1984 and not 19.8.1983. Another defect in the notification was that the applications were restricted to serving staff who were retiring upto 31.12.1990 and not upto 31.12.1987. They have not denied that they have formed the panel after inviting applications in which the applicants were ultimately put on the panel declared on 22.5.1984. They have further said that this panel was declared irregular inasmuch as in terms of the Railway Board's circular of 7.6.1984 no appointment of casual labour could be

made ~~available~~ after 31 on 1.1.1984 and the orders received 31 because it was done on from the HQ office for its cancellation. According to them applications invited vide notification of 5.5.1986 were proper as 100 posts of Khallasis had to be filled for Alambagh, Workshop, Lucknow and the notification was made in accordance with the guide lines for recruitment. A copy of which has been placed by them as Annexure 'III' to the reply. These applications which are invited by notification of 5.5.1986 were not confined to only sons of serving employees but were 31 also open to 31 other persons through Employment Exchange. According to the respondents the selection made by the Workshop was irregular and had to be cancelled and, therefore, they have no right or claim for appointment against regular posts.

4. We have heard the learned counsel for both the sides. Sri O.P. Srivastava, learned counsel for the applicants submitted that the notification against which the applicants were empanelled was to provide social justice to the employees and once they got empanelled the principle of last come first go should apply to them. He further contended that no opportunity was given to the applicants before taking away the right and it was not material whether the applicants were recruited as Casual Labour or as Labour. According to him the word 'casual' did not take away the right of the applicants from getting appointed. He further challenged that the Railway Board's orders on the ban of recruitment of Casual Labour has been wrongly connected and does not apply to the applicants. It was meant for the ~~skrengkh~~ construction staff and

according to Article 14 of the Constitution the differentia existed and, therefore, it cannot be said that the selection of the applicants was irregular. If it was irregular the irregularity would be cured. According to the learned counsel it is the effect of the order passed that has to be seen and even if there were irregularities the cancellation could not be done without giving opportunities of being heard. He has attacked the cancellation of the panel on three grounds, viz. factual, legal and promissory estopple. According to him the applicants have now become over age. He has also contended that a different treatment was possible because the applicants' fathers were working and, therefore, if once a scheme is made out and a jesture is shown it cannot be denied later on. According to him the respondents could not take advantage of their own wrong and the action of cancelling of the panel and recruitment of others was too harsh compared to the violation of rules in the formation of the panel and it hits Article 21 of the Constitution as the livelihood has been taken away. The above submissions have been opposed by the learned counsel for the respondents on the points that the recruitment of Casual Khallasis which was made by the local administration was in violation of Articles 14 and 16 of the Constitution because it restricted the selection to a particular class of persons. He has relied on the case of Yogender Pal Singh and others v. Union of India and others (A.I.R. 1987 S.C. 1015) where the Hon'ble Supreme Court has held that preferential treatment could not be given in matter of employments. On the point of giving opportunity before cancellation of the panel

the learned counsel for the respondents submitted that there was nothing personal in the cancellation and that it was not a case of an individuals name having been taken away from a panel and the Government was not gaining anything by this cancellation and, therefore, there was no question of promissory estopple. The mere inclusion of the name in the panel also did not give any right to the applicants. The learned counsel for the applicants further contended on the submissions made by Sri Lalji Singh, learned counsel for the respondents, that the eligibility is same and he cited the cases of compassionate appointments which are made or appointments against reservations for retired military persons etc. which are made on the basis of differentiation in equity which is permitted by Article 14 of the Constitution. We have seen the case file also.

5. At Annexure 'III' of the application is the notification dated 19.8.1983 on the formation of a panel of Casual Khallasis at the rate of Rs.10/- per day. This notification invited applications in the prescribed form from amongst the sons of serving staff of Alambagh Workshop, who were to retire upto 31.12.1987. It was also mentioned in the notification that it was in the back-ground of high unemployment and to render social justice to greater number of staff. Therefore, only such staff were required to apply who had none of their sons employed in the Railways. It was in consequence of this notification that a panel was declared after the interviewes were held by the Assistant Production Engineer, Assistant Personnel Officer and Assistant Works Manager of the Workshop on 17/18.5.1984. They

found 187 candidates suitable for engagement as Casual Khallasis at the rate of Rs.10/- per day. The order which is placed at Annexure 'IV' to the application dated 22.5.1984 also said that those selected will have no claim for their regular absorption against vacancies of Khallasis unless and until they are screened by the Screening Committee on completion of 120 days continuous service as Casual Labour. Thus it is clear that this notification was very restrictive. This selection was not open to all the employees of the Workshop and to outsiders and only such staff whose sons were not employed already in the Workshop and who were retiring after some period could apply.

6. In the counter affidavit a copy of the confidential D.O. of the Chief Works Engineer, Northern Railway, dated 18.6.1984 has been placed at Annexure 'II'. This letter questioned the correctness of the notice that had been issued by the Workshop calling for applications from retiring employees in connection with the appointment of their sons and it termed this as highly irregular and against the constitution and, therefore, ordered the withdrawal/cancellation of the notification and further action in response to it and also the explanation of the person concerned who signed/authorised issue of the letter.

7. The question, therefore, that is before us, is whether a restrictive selection could be made in matters of employment by the respondents and whether the notification issued by them on 19.8.1983 could stand to the scrutiny of the law. Article 16 of the Constitution is on equality of opportunity in matters

of public employment. It lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. This Article does not, however, prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State. It is thus clear that no appointment can be restricted and thus denying equality of opportunity to the other citizens in matters relating to employment. The notice which has been issued by the Deputy Chief Mechanical Engineer on 19.8.1983 clearly violates the provisions of Article 16 of the Constitution.

8. As far as equality before the law is concerned Article 14 of the Constitution lays down that equals have to be treated equally and unequals are not to be treated equally. While it forbids class legislation, it does not forbid classification for purposes of implementing the right of equality which is guaranteed by it. But the classification has to be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. The differentia has also to be rational and must have a nexus with the object sought to be achieved. The notification wanted to fill up vacancies of Casual Khallasis. This is an employment and not

restricted to any particular group of persons. It was open to all eligible candidates. Therefore, placing restriction on the applicants that they should be sons of employees who are going to retire after a short while and who has no other brother in employment in the Railways cannot be called as a reasonable classification. There is definitely no rationale in such a classification as it is based on some characteristics which are not to be founded in all persons who are eligible for such employment. It is, therefore, also hits Article 14 of the Constitution.

9. The learned counsel for the applicants has challenged the second notification which was issued by the Deputy Chief Mechanical Engineer in 1986 for the formation of a panel of Khallasis in the Alambagh Workshop on the grounds that since the applicants had already been empanelled against posts of Casual Khallasis regular Khallasis could not be recruited by denying the applicants the chance of employment. He also contended that there is no difference between Casual Khallasi or a Khallasi. It will be difficult to agree to such a contention because the category of casual khallasis is entirely different to that of regular Khallasis. A Casual Khallasi can become a regular Khallasi after getting screened but as long as he remains a Casual Khallasi his employment is of a casual nature and is liable to be terminated under the rules on the subject after a due notice.

10. The learned counsel for the applicants has relied on a number of cases to support the contentions raised by him in regard to the opportunity which should

have been given before the panel was cancelled and in regard to his claim that since it was a social welfare scheme for the retiring fathers and an offer was made it could not be withdrawn unilaterally and that the cancellation of the panel has hitted the applicants adversely because their right to livelihood has been taken away. He has relied on the case of S. Govindaraju v. K.S.R.T.C. and another (1986 (1) S.L.J. 470). The Hon'ble Supreme Court in this case had observed that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulation he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequence entail as he forfeits his right to employment in future. In such situation even though the regulations do not stipulate for affording any opportunity to the employee the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. In this case the appellant was selected for appointment as Conductor in the Karnataka State Road Transport Corporation. He was not given a regular appointment but he was appointed to work in temporary vacancy and his services were terminated on the ground of his being found unsuitable for the post. The termination further directed that the appellant would forfeit his chance for appointment in terms of selection and his name shall stand deleted from the select list. The observations of the Hon'ble Supreme Court are in the back-ground of these facts. We do not think that this ratio helps the applicants in the

present cases. They have not been singled out. The entire process of selection made against a very restrictive employment notice which cannot be termed as correct in the eye of law, had to be cancelled.

11. On the issue that the government cannot take advantage of its own wrongs, the learned counsel has relied on the case of Sunder Dev Constable v. R.S. Gupta, Deputy Commissioner and others (1984 (1) S.L.J. 692). This is a judgment given by the Delhi High Court. As rightly contested by the learned counsel for the respondents the Government has not taken any advantage of the wrong notice issued by the Deputy Chief Mechanical Engineer, Alambagh, Workshop. The next selection that they arranged to fill up the regular vacancies advertised was open to all eligible candidates and the applicants were well within their right to apply for those posts as well, if they found themselves eligible. A wrong action taken by an officer in the field which was against the law may result in certain hardships but if the order cannot be sustained and has to be cancelled it cannot be said that the applicants have been made to suffer. The applicants have to create a right for themselves before they can claim such a protection. Coming on the panel does not give them any right for employment and then their right was only limited to posts of Casual Khallasis if there were any vacant and available posts to be filled in the Workshop. It is not their case that the respondents have formed a separate panel to fill up the posts of casual Khallasis.

12. The learned counsel for the applicants has also relied on the case of Surya Narain Yadav & others v. Bihar State Electricity Board & others (1985 S.C.C. (L&S) 539). In this case under the Employment Promotion Programme some posts of Engineers were advertised. In due course a selection was made and a group of apprentice engineers also called trainee engineers came to serve under the Board. These engineers had already completed their training for the purpose of obtaining the degree in engineering. They were given six months further training by the Board and they were told that training does not guarantee employment. Then it was resolved by the Board to fill up 200 vacant posts on the basis of chain system and the existing trainees would be continued as trainees. As time elapsed no appointments were made. Then representations were made by some of them who were likely to become overaged for appointment to the Government. Later on they were advised that a decision had been taken to provide them regular appointment. But this decision was also not given effect to. The Hon'ble Supreme Court in this case observed that though the Board was aware of the position that these trainee engineers formed a special class and the peculiar circumstances warranted a definitely special treatment, Yet it fail to stand up to its representations made from time to time to a group of engineers who had spent their valuable life for qualifying themselves as engineers and who believing the representation of the Board continued to remain in employment of the Board as trainee engineers foregoing opportunities available to seek other employments and in the process have become age-barred for any public employment. The Hon'ble Supreme

Court further held that the Board being a statutory authority the defence made by them was ill-placed and could not hold as a shield against the application of the equitable doctrine and the trainee engineers formed a specific class and from time to time the Board treated them as members of a class and in its resolution recognised this fact and swore to the position ~~sx~~ that such treatment should never be~~en~~ repeated even if apprentice engineers were appointed. In the applicants' case they had not been given any employment by virtue of the selection through which they underwent. Only a panel was prepared. Preparation of a panel cannot be considered to have given them any right for employment against a regular post. Had they been appointed as a Casual Khallasis it could then be considered that they have become a class by themselves and principles of equity should have then come into play. We do not agree with the submissions made by the learned counsel that the applicants were prevented from seeking employment elsewhere as in the case of the apprentice engineers in the aforesaid relied on case, who were kept under training under specific ~~promotions~~ promises and representations made by the Board. The ratio of this judgment,therefore, does not again help the applicants.

13. Yet another case on which the learned counsel for the applicants has relied on is Sirsi Municipality v. Cecelia Kom Francis Tellis (AIR 1973 S.C. 855). In this case the Hon'ble Supreme Court had observed that the elementary and basic procedural safeguard in cases where dismissal must be based upon a decision arrived at quasi-judicially flows not merely from an implied rule of natural justice but it is actually embodied in

a rule which should be interpreted as a legal limitation or fetter on the power of the authority to dismiss. It constitutes a condition precedent to a valid decision to dismiss and as the authority had failed to see that a mandatory duty, embodied in a basic rule, had been carried out, the resulting decision must be held to be void. According to the learned counsel it is the effect which is required to be seen and if any order which is passed is prejudicial, opportunity must be given. We feel that it will be stretching the concept of natural justice In this particular application of a panel which is formed for filling up vacancies of casual labour, which sought to be cancelled for whatever reason it may be without giving opportunity to the empanelled persons and specially in the case when it was made in pursuance of an order which is blatantly wrong. We do not think that the observations made by the Hon'ble Supreme Court in Sirsi Municipaloty's case are in any way applicable to the case of the applicant.

14. It cannot be said that the cancellation of the panel deprived the applicants of any right which was conferred by Article 21. We do not see any unreasonableness in the action taken by the Chief Workshop Engineer in ordering cancellation of the notice and in the panel. It cannot be said that the action was not within the scope of the authority of the Chief Workshop Engineer and that it was not reasonable.

15. The learned counsel for the respondents has relied on the case of Yogendra Pal Singh and others v. Union of India and others (AIR 1987 S.C. 1015). In this case the Hon'ble Supreme Court had held that Rule 12.14 (3) of the Punjab Police Rules, 1934 which authorised the granting of preference in favour of sons and near

relatives of persons serving in the police service was unconstitutional and, therefore, the claim made by the appellants in that case for relaxation of the rules in their case regarding recruitment of constables because they happened to be the wards or children or relatives of the police officers was negatived since their claim was based on descent only, As others will thereby be discriminated against as they do not happened to be the sons of police officers. The Hon'ble Supreme Court had held that any preference shown in the matter of public employment on the ground of descent only has to be declared as unconstitutional. The learned counsel for the applicants said that in the applicants' case they had still to face the selection and they were not recruited only because they were the sons or dependents of the railway employees and that the Hon'ble Supreme Court only held that recruitment by descent was unconstitutional because in the relied on case the candidates were otherwise not eligible while in the applicants' case they were eligible in any case. We will call it only hair splitting issues. The fact remains that the notice issued by the Deputy Chief Mechanical Engineer was limited to the sons/such of those employees who were going to retire after a short while and who had no other son employed in railway service. Therefore it was a selection based on descent which is prohibited by Article 14 of the Constitution and the reliance placed by the learned counsel for the respondents on this case cannot be all together, brushed aside.

16. Another case on which the learned counsel for the respondents has relied on is the case of Davinder Singh and others v. The State of

Punjab and others (1982 (2) S.L.R. 249). It is a judgment of the Punjab and Haryana High Court. In this case the Government had advertised certain vacancies and the commission had recommended names of candidates for appointment. The Punjab and Haryana High Court had held that mere recommendation of names of candidates by the commission gave no right to appointment and the Government was not bound to fill up the posts. In Subhash Chander Marwaha's case (A.I.R. 1973 S.C. 2216) which has been referred to in this judgment the Hon'ble Supreme Court had ruled as follows :-

> "The competitive examination is for the purpose of showing that a particular candidate is eligible for consideration. Selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that the candidate's name appears in the list does not entitle him to be appointed.
>
> The only restraint put on the power of the Government to make appointments of Subordinate Judges under R.10 is that the State Government shall not travel outside the list and that the Government shall not depart from the ranking given in the list.
>
> Thus by appointing first seven persons out of 15 in the list as Subordinate Judges the Government does not infringe any requirements of the Rule and no legitimate grievance can be made by remaining persons in the list that there still are vacancies. The unfilled posts do not warrant issue of mandamus to an authority."

We feel that this rulling by the Hon'ble Supreme Court amply covers the case of the respondents.

17. In view of what has been stated above we do

not find any merit in the prayer made by the applicants that civil rights had accrued to them and they should not have been taken away without proper and reasonable opportunity. The applicants were only selected for the post of Casual Khallasis and if there were no posts they could not say that they should have been considered for absorption against regular vacancies and that there was anything illegal or unreasonable in the orders of the respondents cancelling the notification and the panel. Both the applications are, therefore, liable to be rejected.

18. In the result we dismiss both the applications (O.A. Nos.500 of 1986 and 206 of 1987). Parties are directed to bear their own costs.

Member (A).

24/11/87
Member (J).

Dated: November 24th, 1987.

PG.