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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No.1645 of 1986

Abhiman Plaintiff-Applicant.

Versus

Union of India & another ... Defendants-Respondents.

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

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

This suit has been received on transfer from the court of Munsif, Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff in this suit has claimed the relief that the order dated 25.8.1984 passed by the Chief Security Officer cancelling the suitability test for Senior Clerks be declared as illegal and the defendants be restrained from holding fresh selections for the post of Sr. Clerk.

2. The facts of this case ^{are} that the plaintiff, who was working as a Clerk at Gorakhpur in the Security Branch was transferred to Varanasi on 14.8.1978. On 24.11.1978 he was locally put to officiate on ad hoc basis as Sr. Clerk and started working as such from 25.11.1978. Thereafter a suitability test was held and his promotion was regularised on 7.9.1982 with retrospective effect from 25.11.1978. In the meantime one Roshan Lal, who was a clerk in the Security Branch at Izzatnagar was also promoted as Sr. Clerk on 12.12.81.

by the Security Officer, Lucknow with effect from September, 1980. A selection of Office Superintendent Grade II was proposed to be held by an order dated 24.4.1982 and Roshan Lal was called for the same. The plaintiff on the basis of his regularization with effect from 25.11.1978 claimed seniority against Roshan Lal and represented against his not being called for the selection. The test was not held but Roshan Lal was promoted as Head Clerk and posted at Gorakhpur. The plaintiff represented against this promotion but his representations brought no response. Instead the Chief Security Officer by his order No. E/P/210/1(M) of 25.8.1984 cancelled the panel in which the plaintiff was declared successful on 6.9.1982 and his promotion was treated as ad hoc. The cancellation of the panel by the Chief Security Officer on 25.8.1984 has been challenged by the plaintiff on the plea that the number of vacancies were correctly calculated and there was no mistake in the procedure. Moreover, the cancellation could only be done within specified time and after giving notice to the affected persons. The panel had already exhausted hence there was nothing to cancel. According to the plaintiff if at all the only mistake was that more persons were called but not less than the requirement. Hence the cancellation was wrong. The post of Sr. Clerk being Division Controlled the test held in 1982 was not incorrect and the plaintiff claims that the cancellation has been done with ulterior motive to deprive him of his promotion. According to him a person, who has been found suitable for a post may not be subjected to a fresh test for the same post.

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3. The defendants' case is that on receipt of a representation, from one of the candidates, who appeared in the suitability test along with the plaintiff but had failed, that the number of candidates called was in excess of what was permissible under the rules, against 5 vacancies 10 persons were called instead of 5, the Chief Security Officer cancelled the panel. Moreover, the selection held by the Security Officer, Varanasi was not correct as he was not authorised to hold the selection of Varanasi Division, ^{by it} not being a separate unit. Also the plaintiff had gone on transfer to Varanasi on his own request and thus was not eligible even for the ad hoc promotion as there was one other person senior to him available there. Thus the promotion and regularisation were against rules. Before cancellation of the panel the plaintiff had been heard. According to the defendants there were only 6 vacancies out of which one is reserved for Graduate quota. Anticipated vacancies due to retirement or creation of new posts + 20 per cent was also to be taken into consideration but in the instant case there were no anticipated vacancies.

3. We have heard the learned counsel for both parties & seen the case file.

4. The Indian Railway Establishment Manual lays down the instructions regarding drawing of panels and their life and procedure for cancellation etc. Panels drawn and approved by the competent authority remain current for two years from the date of approval by the competent authority or till they are exhausted whichever is earlier. The date of approval of a Provisional Panel is also the date for currency of the final panel. A panel once approved should not normally be cancelled

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or amended. If any procedural irregularities are found after its approval and it is considered necessary to cancel or amend it it has to be done after obtaining the approval of the authority next higher than the one, who approved the panel. An employee, who once officiates against a non-fortuitous vacancy in his turn on the panel is not required to appear again for fresh selection. In the plaintiff's case the panel was declared on 21.7.1982. Thus the life of the panel starts from 21.7.1982 and two years will expire on 21.7.1984. The panel was, however, exhausted immediately because there were only 5 vacancies. The impugned cancellation order was issued on 25.8.1984. Thus on both counts, i.e. life of two years or exhaustion of the panel, the panel did not exist on 25.8.1984. If something did not exist there was nothing available for cancellation. The action of the Chief Security Officer was, therefore, wrong in cancelling an exhausted or non-existent panel. The orders for cancellation could, therefore, not be enforced.

5. Thus the calculation of vacancies by the Security Officer did not deprive any eligible candidate from being called in the selection. Also, even if 5 persons were to be called, the plaintiff's position could not be disturbed. At best the size of the panel could have been regulated. Cancellation of a panel ³ visited the plaintiff with evil consequences. We find there is substance in the apprehensions raised by the plaintiff.

6. Regarding the averment made on the subject of the authorization of the Security Officer for holding

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the selection in the face of Varanasi not being a separate unit, we note that the 21.7.1982 order announcing the panel was copied to the Chief Security Officer. The only comment in CSO's order cancelling the selection has been on the number of vacancies and not on the competency of the Security Officer to hold the selection for the vacancies within his jurisdiction. We, therefore, reject this contention. Then it took nearly 2 years for the whole matter to reach a ~~finality~~³ ~~conclusion~~³. By this time the plaintiff had generated a claim for the promotion specially in the back ground that he had been working since 24.11.1978, and if it is expropriated under the ~~numberage~~³ of the reason of number of persons called for selection it would be against the principles of equity.

7. On the above considerations we quash the impugned order dated 25.8.1984 passed by the Chief Security Officer, North-Eastern Railway, Gorakhpur cancelling the panel formed as a result of the suitability test for the post of Sr. Clerk. Fresh selections can only be held for future vacancies.

8. In the result the Suit No.738 of 1984 is decreed in favour of the plaintiff. Parties will bear their own costs.

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Member (A).

Dated: October 20th, 1987.

Subarne
20/10/87
Member (B).