

Central Administrative Tribunal, Allahabad.

Registration T.A.No.367 of 1987 (Writ Petition No.5996 of 1979)

Dori Lal Pal ... Petitioner

Vs.

Union of India and 23 others ... Respondents.

Hon.G.S.Sharma, JM
Hon.N.V.Krishnan, AM

(By Hon.G.S.Sharma, JM)

This writ petition under Art.226 of the Constitution of India has been received from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985, wherein the Petitioner has prayed that the order dated 26.6.1979 issued by the General manager Northern Railway empanelling the 21 candidates for the post of Labour Welfare Inspectors (copy annexure 10) and another order of the same date (copy annexure 11) posting the said candidates as Welfare Inspectors be quashed.

2. The relevant facts of this case are that the Petitioner had joined the Railway service as a Clerk in 1954. On 3.3.1978, the Divisional Railway Manager Northern Railway Moradabad had issued a notice for holding a selection for the post of Welfare Inspectors. For the selection, both the written test and oral test have been prescribed under the Rules. The Petitioner along with other candidates appeared in the written test and he was declared successful therein vide notice dated 21.10.1978. He also appeared in the viva-voce test but in the panel of 15 persons declared on 19.1.79 by the office of the General Manager, Northern Railway the name of the Petitioner did not appear. Thereafter one more person was included in the panel vide notice dated 22.1.1979.

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3. It is alleged that serious complaints of favouritism, nepotism and other mal practices in respect of the marks awarded to the candidates in the viva-voce test on the basis of wrong gradation list were made to the Railway Board and as a result of this the General Manager vide his letter dated 8.2.1979 cancelled the ~~original~~ ^{provisional} panels of 16 persons declared as above. In continuation of this letter dated 8th Feb, 1979, the General Manager (P) issued another letter on 9.2.1979, copy annexure 8, stating that it has been decided that the candidates ^{mentioned} in the attached list will be interviewed by a fresh Selection Board on the dates noted against them. In this way, the dates for fresh interviews were notified and the name of the Petitioner ~~was~~ also appeared at sl.no.920 for his interview on 21.2.1979 in the said list. These interviews were, however, never held and the same were postponed till further orders by wireless message issued from the Office of the General Manager on 17.2.79 copy annexure 9. The office of the General Manager thereafter ^{on 26.6.1979} in supersession of his aforesaid letter dated 9.2.1979 and the wireless message dated 17.2.1979 declared a fresh panel of 21 persons including the names of 16 persons who were included in the two provisional panels declared earlier stating that the matter has been considered by the competent authority and it has been decided that the following 21 candidates will be treated as empanelled for the purpose of selection as Welfare Labour Inspector.

4. Aggrieved by this order, the present petition has been filed with the allegations that after cancelling the earlier provisional panels of 16 persons on the basis of serious complaints and irregularities

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made in oral test and after once taking the decision for holding fresh oral test, the competent authority could not declare a fresh panel of 21 persons under the law and his this action is illegal, arbitrary and malafide. It is alleged that this was done at the behest of the then State Minister for Railways who was interested in some candidates who were empannelled earlier. Placing reliance on para 216 of the Railway Establishment Manual (for short Manual) it has been further alleged that the personality test of 25 marks was necessary for completing the selection and without holding the fresh interviews the panel of 21 persons declared by the Headquarters was contrary to the provisions of para 216 of the Manual.

5. All the 21 persons empanelled under the impugned order dated 9.2.1979 were impleaded as Respondent nos. 4 to 24. They however, did not file any Counter Affidavit and none appeared on their behalf at the time of hearing before us. On behalf of the Govt. Respondent nos. 1 to 3, a Counter Affidavit has been filed by the Addl.APO (W) N.Railway, Headquarters Office New Delhi in which it was admitted that on receiving complaints from a few candidates who appeared in the selection the case was reviewed by the competent authority and the panel of Welfare Inspectors was cancelled vide order dated 8.2.1979. It was also not disputed in this Counter Affidavit that the competent authority had decided to hold fresh oral test and the ^{order} ~~test~~ for the same ~~was~~ notified. It was, however, stated that on the reconsideration of the entire pros and cons of the selection, the panel of 21 names was declared which included the earlier 16 names. The panel had to consist of 21 persons and the remaining 5 persons were not empanelled for want of orders in connection with dereservation from the Railway Board. He has

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denied the allegation of the Petitioner that the panel of 21 persons was declared at the behest of the then State Minister for Railways. It has been further stated in the Counter Affidavit that the Petitioner was not empanelled earlier and as such, he is not an aggrieved person and cannot maintain the present writ petition. The competent authority had declared the second panel in accordance with the powers vested in him and the grievance of the Petitioner is not justified.

6. In view of the facts stated above, the limited question arising for determination in this case is whether after cancelling the earlier panels of 16 persons on the basis of the marks awarded to the candidates in the earlier ^{oral} test and taking a decision to hold fresh oral test, the General manager was competent to declare another panel either without taking into consideration the marks of the oral test ^{at all} or after taking into consideration the same marks which were not properly and correctly awarded in accordance with the own decision of the competent authority, which ^{fact} had compelled him to cancel the panels. The learned counsel appearing on behalf of the Respondents, however, vehemently maintained before us that the General Manager was quite competent to cancel or declare a panel and the earlier panel was rightly cancelled by him and the second panel was also rightly declared by him and there was no lack of competence or jurisdiction on his part. The competence of the General Manager to do so is not in dispute. The real question to be seen is whether he could do so in accordance with the prescribed procedure or according to his own sweet will in an arbitrary manner ^{and} We are, ~~how~~ ^{ever}, unable to accept the bald statement made by the learned counsel for the Respondents.

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7. Para 216 of the Manual prescribes the procedure for holding the selection and clause (e) of this Para provides that the oral test should consist of 100 marks. Out of them, 25 marks have been prescribed for personality, address leadership, academic and technical qualification. Without holding an oral test, there can be no assessment about the merits of a candidate on these points. 50 marks have been assigned for professional ability and out of them a candidate has to obtain 30 marks to qualify himself. 15 marks have been assigned each for seniority and record of service. According to the allegations made in para 11 of the Petition, the complaints of favouritism, nepotism and other mal-practices including the complaint of giving marks on the basis of erroneous and vitiated gradation list were made to the Railway Board. In reply to these allegations, it has been stated in para 11 of the Counter Affidavit that on receipt of the complaints from few candidates, who appeared in the selection, the case was reviewed by the competent authority who had ordered on 8.2.1979 that the panels declared earlier be cancelled. This shows that the competent authority ^{was} satisfied with the genuineness of the complaints. It further appears from the order dated 9.2.1979, copy annexure 8, which was a follow-up action that the competent authority decided to hold fresh interviews by a fresh Selection Board and also notified the dates for the same. The fact that the fresh interviews were to be made by fresh Selection Board further goes to show that the competent authority had lost the faith in the first Selection Board and that is why the fresh interviews were decided to be held by a fresh Selection Board. After doing all these, the competent authority cannot be allowed to declare a fresh panel of 21 persons arbitrarily

without holding a fresh selection and, in our opinion, this action of the competent authority neither has the support of any law or rules nor is otherwise reasonable or just. In the often quoted case of D.S.Nakara Vs. Union of India (A.I.R 1983 S.C.-130) the Hon'ble Supreme Court had observed that a ~~disciplinary~~ ^{discriminatory} action of the Government is liable to be struck ~~ed~~ down, unless it can be shown by the Govt. that the departure was not arbitrary, but was based on some valid principles which in itself was not irrational, unreasonable or discriminatory. Reliance was further placed on behalf of the Petitioner in Ramana Daya Ram Shetty Vs. International Air Port Authority of India (A.I.R. 1979 S.C.-1628) in which considering the principle of equality, the Hon'ble Supreme Court had observed that Art.14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on rational and relevant principles, which is non-discriminatory. It must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. The contention of the Petitioner therefore, is that the action of the competent authority, namely, the General Manager in this case in declaring the fresh panel of 21 persons on the basis of the old written and oral tests was arbitrary and discriminatory and his ^{to do so} action had no sanction of law. ^{to do so} It has been further contended that as the name of the Petitioner appeared in the list of the candidates called for fresh interview, he has every cause of action to challenge the impugned order of empanelment.

8. On behalf of the contesting Respondents, it was contended that a long period of 10 years ^{as} ~~has~~ elapsed in the meantime and ^{no} stay was granted by the High Court and in case the said order is quashed at this late stage,

it will not only unsettle the seniority and the promotion of 21 persons but will also grossly affect the working of the Railway administration. In reply to this the learned counsel for the Petitioner placed his reliance on C.Channabasavaih and others Vs. State of Mysore and others (A.I.R. 1965 SC -1293). The relevant observations of the Hon'ble Supreme Court in this connection are quoted below :-

" It is very unfortunate that these persons should be uprooted after they had been appointed but if equality and equal protection before the law have any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not, even at the cost of considerable inconvenience to Government and the selected candidates do the right thing."

We are, therefore, of the view that merely on the ground of delay in the disposal on this case, the Petitioner cannot be deprived of the ^{fruits} ~~benefit~~ of this litigation to which he could be otherwise entitled. In our opinion, the panel of 21 persons declared by the impugned order dated 26.6.1979 is liable to be quashed and the General Manager, Northern Railway is morally and legally bound for holding fresh interviews by fresh Selection Board in the light of his order dated 9.2.1979, copy annexure 8.

9. We accordingly allow the petition and quash the impugned order dated 26.6.1979 as well as the promotion order of the same date, copies annexures 10 and 11 and direct the General Manager- Respondent no.2 to get his order dated 9.2.1979, copy annexure 8, complied with within a period of four months from the date of the communication of this order. Till the ^{compliance is done} ~~compliance is done~~ the Petitioner and the Respondent nos. 4 to 24 shall not be reverted from their present posts merely on the basis of this order.

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The question of promotion of the parties will depend upon the ultimate empanelment made in compliance with this order. The parties are directed to bear the

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MEMBER (A)

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MEMBER (J)

Dated: 13th July 1989
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