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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 626 of 1987

Hari Shanker Morya Petitioner-Applicant.

Versus

Union of India & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

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

Writ Petition No.1183 of 1982 has been received on transfer from the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985. The petitioner, Hari Shanker Morya, was working as a Clerk in the Northern Railway in stores Department at Lucknow. In his petition he has said that the recruitment to the post of Clerk is made 33 1/3% by promotion from amongst class IV staff of the same Department and the remaining by direct recruitment through Railway Service Commission (RSC). Against the promotee quota of 33 1/3% in the year 1977 a panel of class IV employees of the Stores Department was drawn. This panel was announced on 4.11.1977. Respondents 3 to 11, who had participated in the selection ~~procedure~~ did not find their names in the original panel. Those who were placed on the panel were promoted to the post from class IV category to class III category. The petitioner in this petition was selected through the RSC in the quota prescribed for direct recruits and was appointed with effect from 13.10.1979, in the Stores

Department of the Northern Railway at Lucknow. Various types of pressures were brought by respondents 3 to 11 to get their names included in the promotee quota panel of class IV employees which was announced on 4.11.1977. Their requests were initially turned down by a letter dated 28.1.1980 (Annexure 'I' to the writ petition). But ultimately on 15.3.1980 the said respondents 3 to 11 were included in the panel of class IV employees which was announced on 4.11.1977. According to the orders they were to be adjusted against the existing or future promotee vacancies falling in the/quota. The petitioner's grievance is that he had already come through a regular source of direct recruitment and was senior to respondents 3 to 11 who joined as Clerks on 18.3.1980 but/their inclusion in the panel of 4.11.1977 they became senior. According to the petitioner the inclusion of respondents 3 to 11 in the panel was illegal as the panel had a life of two years and it had exhausted on 4.11.1979. In the order promoting respondents 3 to 11 it was also mentioned that they will be replaced on the availability of candidates selected by the RSC as the promotion order (Annexure 'III' to the writ petition) shows. The Deputy Chief Controller of Stores called 34 persons on 15.2.1982 for a selection on seniority basis for further promotion to the post of Senior Clerk. In this list respondents 3 to 11 were also included and the petitioner was eliminated and has not been called though he was an earlier appointee to the post of Clerk. The petitioner has, therefore, challenged this action of the respondent no.12 and prayed for the issue of a writ in the nature of certiorari quashing Annexures 'II', 'III' and 'IV' to the writ petition after summoning the records in original from responde

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1, 2 and 12 and a writ in the nature of mandamus commanding respondents 1, 2 and 12 to draw the list for consideration and selection of persons for the post of Sr. Clerks in accordance with the provisions contained in para 302 of the Railway Establishment Manual on the basis of length of service on the post of Clerk with all consequential benefits to him.

2. In their reply to this petition the Government-respondents have admitted that the petitioner was appointed as a temporary clerk after selection by RSC and respondents 3 to 11 were promoted as clerks against the 33 1/3% quota reserved for them. According to the respondents the normal life of a panel is for two years but it does not bar inclusion of names in the panel subsequently. The panel formed on 4.11.1977 was consumed on 9.11.1977, but the names of 9 employees, viz. respondents 3 to 11 were included in March, 1980 and they were also promoted in March, 1980. The General Manager has full powers to make rules with regard to non-gazetted railway servants under their control in terms of para 158 of the Indian Railway Establishment Code, Volume I. It has further been stated in the reply that subsequently after the formation of the panel of 4.11.1977 three Scheduled Caste employees were included in the panel in April, 1978. Four employees were included in the panel in October, 1978 and 9 employees were included in the panel in March, 1980 and all employees included in the panel were promoted immediately after inclusion. The 9 employees, viz. respondents 3 to 11 were originally senior in class IV category to some of those who were empanelled on 4.11.1977 and who were included in the panel prior to them. It has further been said that the seniority has been fixed in terms of the Rule 302 of the

Indian Railway Establishment Manual and since the 9 employees, viz. respondents 3 to 11 were senior to those who were empanelled earlier the inter se seniority was maintained as provided in Rule 302 of the Manual. It has further been stated that in the group of RSC selected candidates ^{by sometimes} it happens that a candidate of higher panel position is directed for appointment later than a candidate in a lower panel position and even a candidate selected at an earlier date ~~mix~~ is directed for appointment after the candidate of a later selection. Therefore, date of appointment in the same group is not the criteria for determining the seniority and the General Manager (P) is fully authorised to relax or modify the rules regarding recruitment and training of classes III & IV staff. They are also authorised to issue order for ^{by} division of these rules and they are also competent to frame rules with retrospective effect. According to them the condition of replacement of RSC selected candidates was only to ~~protect~~ ^{protect} the quota of direct recruits. This has no concern with the seniority of those already appointed and since these 9 employees, respondents 3 to 11, were senior to those who were empanelled earlier and were given protection of their inter se seniority they became senior to the petitioner. A suitability test for senior clerks was held on 4.3.82 but the results had been withheld as per the High Court's order dated 3.3.1982 in Writ Petition No.1027 of 1982, R.S. Pandey and others v. Union of India and others.

3. We have heard the learned counsel for the petitioner, Sri R.P. Srivastava. Sri G.P. Agarwal pleaded on behalf of the respondents. The main contention raised before us by the learned counsel for the

petitioner was that these 9 employees, respondents 3 to 11 were put on the panel against future vacancies in promotee quota and they could only get their seniority from the date the vacancies arose. The petitioner has ~~not~~ been recruited earlier and joining earlier to them cannot lose seniority to them. According to him the names were not included under any specific rule but on the request of a Labour Union. Sri G.P. Agarwal submits that the panel formed on 7.4.1977 became non-existent in 1979. However, since the amendment has been made retrospectively the natural corollary that seniority should also be given to those whose names were included from a retrospective date would follow. Nothing else was contested before us.

4. According to para 158 of the Indian Railway Establishment Code, Volume I, which in the new edition of the Code is para 124, the General Managers of Indian Railways have full powers to make rules with regard to Railway servants in Group C & D under their control provided they are not inconsistent with any made by the President or the Ministry of Railways. Under this para, therefore, according to the respondents the General Manager was fully competent to relax or modify the rules regarding recruitment and training of class III & IV staff and that this also gives them competency to frame rules with retrospective effect. The point that has been raised in this petition is that a panel which was formed on 4.11.1977 and which was consumed on 9.11.1977 was interfered with in 1980 when the life of the panel both on account of its ^{having been used &} ~~consumed~~ exhaustion and even if we take the life as two years, had exhausted. It is not a question of any power being exercised to make a new rule. The rule

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in regard to the life of the panel or in regard to modification of panel has not been changed by the General Manager. What has been done is that ³¹ contrary to ³¹ existing ³¹ rules, ³¹ against the ³¹ rules, ³¹ to them without any modification having been done ³¹ or without any new rule having been enunciated a panel which had expired was interfered with and new names were added in the panel. We do not agree to the contention raised by the learned counsel for the respondents that this addition of names in an exhausted panel was in terms of any revised rules that were made by the General Manager. No such rules have been brought to our notice by the learned counsel nor any such notification has been shown to us. The panels are normally drawn for the size as advertised both for ³¹ Some candidates have reserved communities and others. In case ³¹ they are ³¹ absented themselves from a particular examination and it becomes necessary to declare a panel before the supplementary examinations are held, only a provisional panel is issued. This is not the position in this case. After the panel ³¹ had been approved it ³¹ was published and notified. In regard to amendment of a panel the orders issued by the Railway Board by their letter No. ENG 167 PM 1/47, dated 5.2.1969 have not been superseded. This lay down that a panel once approved could not normally be cancelled or amended and if after formation of a panel and its approval any procedural ³¹ irregularity or other defects are found and it is considered necessary to cancel or amend it this has to be done after obtaining the approval of the next higher authority than the person who approved the panel. Panels are normally modified only for clerical mistake, over sight or administrative error. Railway Board's letter No. E(NG)1-71 PM1-106, dated 15.12.1971 which lays down life of the panel has also not been

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modified. The currency of a panel starts from the date of its approval and it remains current for a period of two years or till exhausted whichever is earlier. It is for this reason that any representations against the panel are allowed to be made within two months of the publication. Such being the position in regard to the rules on the amendment and life of panels and there being no order shown to us which has modified the rules on the amendment of panels or has authorised an amendment of a non-existent panel, i.e. after the life of the panel has expired, We reject the contention raised by the learned counsel for the respondents that the General Manager can change or modify ^{By a nonexistent panel} the ~~rules~~ and, therefore, he could not under the ^{By existing} ~~modified~~ rules amend the panel after the same had exhausted.

5. Our attention has also been drawn to an office Order No.E/20, dated 28.1.1982 which has been annexed as Annexure 'A' to the rejoinder affidavit filed by the petitioner. This letter issued by the Deputy Controller of Stores, shows that the employees whose names were included in the panel of clerks declared on 4.11.1977 ^{as we} are not eligible for proforma fixation as they were promoted after their cases were considered and names included in the panel as a result of the special request made by the Union and not due to administrative error. If this was the position the vires of the General Manager amending the panel which had no administrative error can also not be accepted. The Selection Board had finalised a panel and the same was approved by the competent authority and announced on 4.11.1977. The fact that there was no administrative error in the formation of this panel will go to indicate that there were some extraneous

influence which were working behind the scene and which ultimately resulted in the General Manager yielding to the special request made by the Union.

6. In the affidavit filed by respondent no. 10 it has been stated that if the panel had inherent lacuna or irregularity it could be amended, modified or cancelled. It has further been said that in the present case the panel was not drawn according to para 216(h) of the Indian Railway Establishment Manual and a large number of seniors amongst successful candidates were overlooked. Para 216(h) of the Indian Railway Establishment Manual is about the arrangement of the names of selected candidates which is to be done in accordance with seniority, except for those who are declared outstanding and who are placed at the top of the list. We had summoned the selection proceedings to satisfy ourselves about the fact that the seniors were actually left out ^{3/} and because para 216(h) had not been followed. We, however, were told that the selection proceedings are not any more available while it has been contended by the petitioner that they are not being deliberately brought before the Tribunal to avoid the facts being placed correctly. Whatever may be the situation the fact that the respondents have not been able to prove their case will go against them and we do not agree that seniors were actually left out because if that would have been so the matter would have been agitated immediately after the publication of the panel and not after a long time. Perhaps if it was so the administration would have also taken steps to modify or cancel the panel within its currency. Therefore, the plea taken that seniors were left out, though they were successful, because of the

wrong arrangement of seniority, i.e. in violation of para 216(h) is rejected. As a matter of fact as late as on 28.1.1980 the Deputy Controller of Stores, Alambagh, Lucknow request to increase the panel from 40 to 50 had been rejected.

7. The respondents have relied on the case of Ramesh Chand Malik v. Union of India and others (S.L.J. 1987 (2) CAT 601). In this case the Cuttack Bench of this Tribunal had held that the applicant could not be made to suffer for mistake of the Department. As has been pointed out above it has been admitted by the respondents that there was no administrative error and the inclusion of the name was done on the request of the Union. Therefore it cannot be said that the panel was amended because there was a mistake made by the Department. No material has also been brought before us to support this view. We can only say that the powers in this case ~~was~~ ³⁴ exercised by the General Manager were arbitrary and not in keeping with the principles of natural justice. To quote Benjamin Cardozo, J. "The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a Knight Errant roaming at will in pursuit of his own idea of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the principal necessity of order in the social life". There could be nothing better to say ³⁴ in regard to the exercise of powers by those, who have to judge an issue brought before them. We feel that the General Manager had over stepped the principles

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inunciated and the panel could not be amended by him at that late stage.

8. In H.L. Vijn and others v. Union of India and others (1984 (1) S.L.R. 99) a Division Bench of the Delhi High Court had held that it is well settled that when material shows the decision to have been made in total disregard of all relevant considerations and on non-existing or irrelevant basis, the decision can only be described as arbitrary and it will fall ^{by} ~~of~~ Article 14 of the Constitution. It was further observed that from a positivistic point of view, equality is antithetic to arbitra*ri*ness and equality and arbitrariness are sworn enemies : one belongs to the rule of law while the other to the whim and caprice of an absolute monarch. Therefore, the action of the General Manager in amending the panel after it had already exhausted can best be termed as arbitrary and not in accordance with rules and, therefore, it has to be set aside.

9. In Registration (O.A.) No. 314 of 1987, Suresh Prasad Choubey v. Union of India & others, in para 7 we had said so :

"The Government-respondents have admitted that they included the name of respondent no.3 in the panel declared on 7.4.1982 on 22.2.1985 after the Railway Board gave them instructions to enlarge the panel and to include the name of respondent no.3 as he had qualified in the selection held in 1981, but could not be empanelled because he was not senior enough. Since no panel existed after the panel of 7.4.1982 got exhausted, there was nothing which should have been enlarged and the order given by the Railway Board by their letter no. E(NG)/1/83/PM1/45/NFIR, dated 30.1.1985 was as a matter of fact an ineffective order and could

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not be enforced. In this letter the Railway Board have taken the plea that in 1981 DLW administration did not take into account one post of Hindi Superintendent in the grade of Rs. 700-900 created in DLW and the consequent vacancy on account of the same in the category of Hindi Assistant Grade I. They have further said that the post was to be filled by a direct recruit earlier and after sometime when the Board decided that it should have been filled by promotion, they have taken action to fill it up as a regular measure and this was contrary justification given by DLW. There is no doubt that the post was sanctioned in 1981 but on the Government-respondents' own averment this post fell in the quota of direct recruitment and it was only on 29.5.1982 that the Board took a decision to fill it up by promotion. Thus at the time when this post was declared to be filled by promotion, the panel, as a result of the selections held in 1981, had already been finalised and perhaps also exhausted. The blame, therefore, for not counting this vacancy could not have been thrown on the shoulders of DLW by the Railway Board. The fact remained that the panel was finalised on 7.4.1982 and at that time the post of Hindi Superintendent was a direct recruitment post and it would not have created a consequential vacancy which could have been included in the total number of posts to be filled while forming the panel as a result of 1981 selection. Therefore, we are not convinced that the orders given by the Railway Board were based on correct facts and that they were not in violation of the existing rules on the formation of panels. Such an order is, therefore, liable to be set aside as this may affect the promotion prospects of the petitioners, and thus inclusion of the respondent no. 3 in the panel by enlarging it cannot be sustained."

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petition. The orders issued by the respondents on 15.3.1980, 18.3.1980 and 15.2.1982, which have been challenged by the petitioner, are quashed. The petitioner will be further eligible for being considered for the post of Sr. Clerk in accordance with their seniority position which should be prepared in terms of para 302 of the Indian Railway Establishment Manual. The parties are left to bear their own costs.

Yerwada
Vice-Chairman.

SPG
Member (A).

Dated: December 14, 1987.

PG.