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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No. 629 of 1987

Bhawani Singh & 14 OthersPetitioners

Versus

D.R.M.N.Rly. & Others Respondents.

Connected with

Registration T.A.No.630 of 1987

Jamuna Prasad Misra & 4 OthersPetitioners

Versus

D.R.M., N.Rly. & OthersRespondents.

Connected with

Registration T.A.No.631 of 1987

S.B.Chaubey and 3 Others Petitioners

Versus

D.R.M., N.Rly. & OthersRespondents.

Hon.D.S.Misra, A.M.

Hon.G.S.Sharma, J.M.

(By Hon.D.S.Misra, A.M.)

These three cases are original writ petitions which were pending in the Lucknow Bench of the High Court of Judicature at Allahabad and have come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985. All these cases involve an identical point of law and the facts of these cases are also similar and shall be disposed of by a single judgement.

2. The petitioners have in all the three cases claimed to have worked as Casual Labour for periods

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more than 120 days upto 30.6.1981 during the period 1978 to 1981. They further claimed^{be} that they are entitled for appointment as class IV employees on regular basis in accordance with the Railway Board's circular dated 8.6.1981 (copy Annexure-2). A screening of the Casual Labour/ Substitutes was held at Gorakhpur, Gonda, Lucknow, Malani Kanpur, Anwarganj in the months of January, February and March, 1983. The result of the screening test, after being approved by the Divisional Railway Manager (respondent No.1) was published on 21.3.83 and it included the names of the petitioners (copy Annexure-3). The petitioners were medically examined and found fit for the category to which they belong. On receipt of a unanimous complaint containing allegations against the screening of Traffic and Mechanical Department a report was submitted by the Members of the Screening Committee to the Senior Divisional Personnel Officer. On 2.5.1983 the Divisional Mechanical Engineer (respondent No.2) sent letters to Chief Train Examiner, Head Train Examiner, Carriage and Wagon Superintendent directing them that only those staff who had been working on their Depot is to be taken after medical fitness whose names appear in the screening list of Carriage and Wagon Branch. In the said letter it was also stated that in case any staff who has not worked in the concerned Depot and is reporting for duty such cases should be referred

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to his office without giving him duty. The petitioners have alleged that respondent No.2 had engaged Casual Labours in large number in violation of the instructions of the Railway Board Circular dated 18.12.1980 not to engage fresh Casual Labour without obtaining prior approval of the General Manager and that above mentioned letter has been sent to get the said persons absorbed in class IV posts against regular vacancy. It is also alleged that the said persons are junior to the petitioners since they started working as Casual Labour after the petitioners. The petitioners have now learnt that at the instance of respondent No.2, respondent No.1 has issued an order on 20.6.83 cancelling the list. The extract of the note containing the said order is Annexure-8. The petitioners contend that respondent No.1 has no power to cancel the list and have prayed for quashing the order dated 20.6.83 and seeking a direction to respondent No.2 restraining him from engaging or continuing to take work from the Casual Labour engaged by him after Railway Board's order dated 18.12.80 and further issue of a direction to the respondents to appoint the petitioners in regular vacancies in accordance with the result published vide Annexure-3.

3. In the reply filed on behalf of the respondents it is stated that the panel formed by the Screening Committee and approved by the respondent No.1 was cancelled by the Divisional Railway Manager after

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detailed check of few random cases having been detected on receipt of complaint from Bhrastachar Nivaran Avam Manav Utthan Samiti Badgaon, Gonda and the check disclosed that the candidates could not produce any record in proof that they have worked earlier in the Railway in any capacity and in some cases there were glaring discrepancy in the date of birth and number of days shown to have worked by the candidates. The Divisional Railway Manager while cancelling the panel prepared by the Screening Committee simultaneously directed for the preparation of a fresh panel by the Screening Committee of all the eligible candidates after proper verification of their service records. It is stated that no injustice has been done to any particular candidate including the petitioners who have further opportunity for consideration of their case if found eligible by the Screening Committee.

4. While admitting these cases the Hon'ble Judges of the Lucknow Bench of the High Court of Judicature at Allahabad also passed the following order " In the meantime fresh screening shall not take place". This order is continuing. We have heard the learned counsel for the parties and have carefully perused the documents on record. From a perusal of the documents on record it is noticed that the screening for forming a panel for

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appointment to class IV posts was confined to posts in the Mechanical Department as is clear from the notice dated 10/16.2.82 (copy Annexure-CA3). In response to the above mentioned notice various Depots under Divisional Railway Manager (M) Lucknow of the N.E. Railway submitted lists of Casual Labours as on 30.6.81 which comes to 139. The respondents have stated in para 4 of the Supplementary Counter Affidavit to the Rejoinder Affidavit of the petitioners that the list of candidates included in the panel was more than 139 persons which confirmed the allegations made about the irregularities committed in preparing the panel. This allegation of the respondents has not been challenged by the petitioners. The petitioners' main contention is that respondent No.1 was not competent to cancel the panel formed by duly constituted Selection Committee and this was done at the instance of respondent No.2, Divisional Railway Manager (C&W) Lucknow who was interested in the persons employed by him subsequent to the receipt of instructions contained in Railway Board's circular dated December 18, 1980 not to recruit new Casual Labour without the approval of the General Manager. Regarding the latter part of the allegation the respondents have stated that the persons recruited after the receipt of the above mentioned circular were given the benefit of their having completed 120 days of continuous service and they were entitled to be given the status of

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a temporary railway employee. We are of the opinion that there is no merit in the allegation of the petitioners that persons not entitled to regularization were regularized or given any undue favour at the cost of the petitioners and the allegation that the panel was cancelled with a view to accommodate persons of the choice of the respondent No.2. is also not correct.

5. We will now examine the main contention of the petitioners that respondent No.1 was not competent to cancel the panel prepared by the Selection Committee. The petitioners' contention is that under para 217 of the Railway Establishment Manual the panel once prepared and approved by the competent authority remains valid for two years and under para 218 can be cancelled only by an authority higher than the one which approved the panel earlier. In support of this contention the following case law has been cited by the learned counsel for the petitioners :

- i) Shyam Bihari Lal & Others Versus General Manager, N.E.Railway Gorakhpur 1972 ALJ. 908.
- ii) Kanhaiya Lal Vs.Union of India & Others 1987(4) Administrative Tribunals Cases. 83
- iii) K.I.Shephard & Others Vs.Union of India and Others. 1987(2) SCALE 123.

In the first case the appellants were selected for promotion to the post of Signal Inspectors vide panel of selected candidates published in the Railway Gazette dated 24.12.70/ 18.1.71. On receipt of a complaint that some

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irregularities have been committed by the Selection Board in preparing the panel of selected candidates, the General Manager cancelled the selection and the panel of selected candidates after getting a report from the Chief Signal Tele-Communication Engineer. The order of cancellation of the panel was challenged and it was held by the Hon'ble Judges of the High Court of Judicature at Allahabad that the General Manager had no power to cancel the panel.

In the second case a selection was held to fill up vacancies of Commercial Clerks etc. out of class IV employees, possessing minimum qualification of S.S.C. or equivalent who may apply for such posts. There was a written test as well as interview. The list of selectees prepared by the Selection Board was approved by the Divisional Railway Manager, Western Railway, Jaipur on 12.12.83. After undergoing the medical examination the petitioners alongwith others were deputed for training. After the completion of training they were sent back to their parent department to work on the original posts vide D.R.M's letter dated 25.2.84. The panel was cancelled vide order dated 19.7.84 with the approval of the Chief Personnel Officer in exercise of the powers conferred by para 216 (j) of the Indian Railway Establishment Manual. The respondents had alleged that the panel was cancelled in view of certain serious irregularities found in the selection proceeding. The

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Hon'ble Members of the Jodhpur Bench of the Central Administrative Tribunal held that having regard to the serious nature of irregularities the respondents were right in invoking the powers of cancellation available under para 216(j) of the Manual. However the Hon'ble Members also observed that as the irregularities in question pertain to certain candidates and not to the entire group of selectees it would be appropriate that the respondents should have amended the panel by deleting therefrom the names of the candidates in respect of whom the said irregularities were discovered.

In the third case 76 employees of the Lakshmi Commercial Bank, which was amalgamated with the State Bank of India under Section 45 of the Banking Regulation Act, 1949, were excluded from employment and their services were not taken over by the State Bank of India. The writ petition under Article 32 of the Constitution and two other appeals by Special Leave against the judgement of the Division Bench of the Kerala High Court were decided by the Hon'ble Supreme Court which held that under the principles of natural justice the excluded employees should have been given an opportunity of being heard with reference to the allegations now levelled against them and the employees were entitled to the benefit of continuity of service for all purposes. *In the instant*

Case The contention of the respondents is that the instructions contained in paras 216, 217 and 218

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of the Railway Establishment Manual are not applicable to the one time panel prepared by the respondents in pursuance of the instructions of the Railway Board. We have considered the rival contentions and we find that paras ^{216/} 2 17 and 218 are contained in Chapter 2 Section (B) of the Railway Establishment Manual and the heading for this Chapter is " Rules governing the promotion of subordinate staff". In the instant case the petitioners ^{be} claimed to have been working as Casual Labour for periods more than 120 days and had acquired the status of temporary railway servant and were entitled for appointment as regular class IV employees. We are of the opinion that the facts and circumstances of the case indicate that the petitioners were not in the regular employment of the Railway Administration and the panel prepared by the Selection Committee was not for purpose of promotion of ^{be} ~~her~~ existing railway employees but it was for the purpose of selecting persons found suitable for appointment as class IV employees. We are of the opinion that the instructions contained in paras 216, 217 and 218 of the Railway Establishment Manual are not applicable to the case of the petitioners.

6. We have considered the applicability of the three cases law cited earlier and we are of the opinion that the first two cases deal mainly with the instructions contained in para 2 16 of the

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Railway Establishment Manual and would therefore be not applicable to the instant case. In the third case the principle of natural justice made applicable to ~~three~~ ^{three} employees of the ~~banks~~ ^{be} was in respect of termination of ~~their~~ ^{be} of their services on the basis of certain allegations against their work and conduct. There is no such allegation of misconduct against any of the petitioners nor have their services been terminated without giving them an opportunity of showing cause. In this view of the matter we are of the opinion that this case law is also not applicable in the instant case.

It therefore follows that the Divisional Railway Manager was competent to cancel the panel after being satisfied that there were serious irregularities in preparing the panel of suitable candidates for appointment as class IV employees in the Mechanical Department of North Eastern Railway at Lucknow. In para 10 of the reply the respondents have given the nature of irregularities noticed in preparing the panel in the inquiry held into the complaint received from the Bhrastachar Nivaran ^b Evam Manav Utthan Samiti Badgaon, Gonda. Some of these are that the candidates screened could not produce any record that they had worked in the Railway in any capacity. In the case of few candidates there were discrepancy in the dates of birth and the number of days the candidates were

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shown to have worked. Further as against a total of 139 names received from various Depots under respondent No.1 in response to the letter dated 10/16.2.82 inviting list of casual labours working in those Depots as on 30.6.81, the panel prepared by the Screening Committee contained 160 names. Respondents have also alleged that the Screening Committee had failed to produce original documents to support the contention of the candidates including the petitioners who appeared before the Screening Committee that they had worked in the Mechanical (Carriage and Wagon) Department under respondent No.1. No service certificates were available with the Screening Committee. These facts were sufficient to create doubt in the mind of respondent No.1. The petitioners have not produced any document to support their contention that they had ever worked in the Carriage and Wagon Depots under the respondents. In any case the respondents had taken steps for preparing a fresh panel and the petitioners as well as others who may have any claim ^{would} have opportunity to present their claim before the Committee. It is not understood as to why the petitioners are opposed to the holding of a fresh screening as ordered by respondent No.1. For the reasons mentioned above, we are of the opinion that there is no illegality in the order dated 20.6.83 (copy Annexure-2) passed by respondent No.1 quashing the list of screened candidates for appointment to class IV posts in the Mechanical Department and directing ^{be} ~~them to~~ ^{tion of} prepare a fresh list. Accordingly we also hold that there is no merit in the prayer of the petitioners that they should be appointed against

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regular vacancy as a result of the list published vide Annexure-I.

7. We also examined the third prayer of the petitioners for issue of a direction refraining the respondent No.2 from engaging or continuing to take work from the Casual Labour engaged by him after Railway Board's order dated 18.12.1980. We have perused the contents of the instructions contained in the Railway Board's order dated 18.12.80 and we find that there is no absolute ban on the engagement of fresh casual labour and the respondents have the power to engage fresh Casual Labour if it is necessary to do so in public interest. We are of the opinion that there is no merit in the prayer of the petitioners and the same is rejected.

8. In the result, the petitions ^{are} ~~is~~ dismissed and the stay order passed by the Hon'ble Judges of the Lucknow Bench of the High Court of Judicature at Allahabad is vacated. There is no order as to cost.

J. M.
J.M.

A. M.
A.M.

Dated the 8th Dec., 1988.

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