

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No. 664 of 1987

(W.P.No. 862/80)

Qazi Abdul Khaliq HashmiPetitioner

Versus

Union of India & OthersRespondents

Hon'ble Mr. Justice K.Nath, V.C.

Hon'ble Mr. K.Obayya, A.M.

(By Hon'ble Mr. K.Obayya, A.M.)

The above described petition is before us on transfer from the High Court of Judicature at Allahabad Lucknow Bench under section 29 of the Administrative Tribunals, Act, 1985. The petitioner Qazi Abdul Khaliq Hashmi who is working as a Head Ticket Collector at Mailani Station, N.E. Railway, has prayed for quashing the order dated 27.3.1980 by which his name was deleted from the panel of Ticket Collectors (Annexure No. 3) and the order dated 28.3.1980 (Annexure No. 4) reverting him from the post of Head Ticket Collector (H.T.C.) to the post of Senior Ticket Collector (S.T.C.).

2. The facts of the case is brief are as follows:

The petitioner appeared for selection to the post of H.T.C. held in 1978. He was declared successful both in written and viva voce test. His name was included in the panel formed on 5.1.1979 and by an order dated 2.2.1979 he was promoted to the post of H.T.C. (R. 425-640 Annexure No. 2) He joined duty at Mailani

in the promoted post. But later by the impugned order dated 27.3.1980 (Annexure No. 3) the name of the petitioner was deleted from the panel and the name of one S.B.Mathur Respondent No. 4 was included instead. By a further order dated 28.3.1980 the petitioner was reverted to the post of H.T.C. (Annexure No.4). It is alleged by the petitioner that the reversion order was not given effect to, and he is still continuing in the post of H.T.C.

3. It is contended by the petitioner that he was the only candidate put in the panel and after his promotion the panel was exhausted. In these circumstances cancellation of the panel which is not in existence does not arise and such an action is bad in the eye of law. His further contention is that selection was on the basis of merit, and not on seniority. The petitioner being found to be more meritorious than others was included in the panel; and deletion of his name by following a different criteria namely seniority is violative of the rules of selection. It is also contended that the reversion of the petitioner without opportunity or notice is illegal and against principles of natural justice.

4. In the counter affidavit filed by the respondents the stand taken is that selection to the post is on the basis of seniority and not on

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merit. Candidates who secure 60% and more marks are declared qualified, and the qualified candidates are arranged in Group 'A' and 'B'. Those who secure 80% marks and above are put in Group 'A' while those who secure between 60% to 79% marks are put in group 'B'. In each group interse-seniority is maintained. It is stated that Sri S.B.Mishra was also qualified in the selection and being senior to the applicant, he was entitled for inclusion in the panel and to be placed above the applicant. The mistake in not including the said S.B.Mishra earlier was detected later, consequently the mistake was rectified and he was included in the panel and the petitioner who was his junior was reverted, as the panel was only for one vacancy. It is further stated that the selection test was held in accordance with rules laid down in para 216(J) of Indian Railway Establishment Manual. The panel formed can always be cancelled for any procedural or other flaws noticed subsequently by a competent authority. In this case the panel was cancelled by C.C.S. who is above the DRM.

5. In the Rejoinder the petitioner has stated that seniority in the selection is only relevant to the extent of awarding marks for length of service and not to determine merit.

6. We have heard the Counsel of the parties and

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perused the record. So far as the facts of the case are concerned there is no dispute. The petitioner was successful at the selection. There was only one vacancy of H.T.C. and he was only candidate to be empanelled. By an order dated 2.2.1979 he was promoted, and he joined duty at Mailani Station. With the joining of the petitioner in the promoted post, the process of selection can be considered to have been concluded. After more than one year, the impugned orders dated 27.3.1980, and 28.3.1980 were passed, where by the name of the petitioner was deleted from the panel, and one S.B.Mathur was empanelled instead, and the petitioner stood reverted from the post of H.T.C. to that of S.T.C. The submissions of the learned counsel for the petitioner were that merit is the criteria for selection, and the petitioner having been found more meritorious was selected and put in the panel. Deletion of his name from the panel by adopting a different criteria ^{namely} 'seniority' is against rules of selection; and that with the promotion of the petitioner, the panel consisting of only one name i.e. that of the petitioner, the panel was exhausted; and in such circumstances cancellation of a non-existing panel was an exercise in futility. The further submission was that the petitioner is being reverted after working in the promoted post for more than one year. This reversion, without notice or opportunity is against principles of natural justice, as such the reversion order cannot

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be sustained.

7. The submissions of the Counsel for the respondents were that the criteria of selection is seniority and not merit, the qualified candidates who secure 60% marks are arranged in the panel, retaining their seniority, and that an administrative error can always be corrected, and in this case the competent authority considered the matter and took the decision to pass the orders under challenge.

8. The controversy in this case is whether the selections are to be held on 'merit' or seniority. We would like to refer to the relevant provisions of the Railway Establishment Manual relied upon by both sides. The Provision is contained in para 216 and reads as under:

216. Procedure to be adopted by Selection Board

- (a)... ..
- (b)... ..
- (c)... ..
- (d)... ..

(e) Selection should be made primarily on the basis of overall merit, but for guidance of Selection Boards the factors to be taken into account and their relative weight are as laid down below:

	Maximum marks	Qualifying marks
1. Professional ability	50	30
2. Personality, address,		

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Leadership and academic technical qualifications	20
3. Record of service	15
Seniority	15

(f)

(g)

(h) The names of selected candidates should be arranged in order of seniority, but those securing a total of more than 75% marks will be classed as outstanding and will be placed at the top of the list in the order of their seniority. E

This para has been subject to amendments and clarifications from time to time. The 'outstanding' grade mark has been raised to 80%. The position as in 216(e) however remained unchanged. The Learned Counsel for the respondents pointed out that the Procedure to be followed by the Selection Boards in drawing up panels is contained in Rule 8(9) A of N.E. Railway Promotion and Selection Rules (Non-Gazetted) (Annexure A-1 to the Counter). The Rule is extracted below:

8(9) (a) After full consideration of all the factors, including the result of the interview and or written test, the Board shall draw up its recommendations. The names of all the candidates who have obtained the qualifying marks both in the aggregate and in the "Professional ability and capacity to do the job" shall be arranged in two groups viz (a)

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those securing a total number or more than 50% marks and (b) others. Persons whose names are in the former group shall be placed ~~one~~ block above persons whose names appear in the latter group. But in each group persons shall be arranged as per inter-seniority within that group itself. Having arranged these persons in the order mentioned, the Selection Board shall then pick out persons in that order upto the number required to be put on the panel."

9. From a reading of the para 216 and the Rule above, it is clear that the term 'merit' signifies Qualifying mark. Those who secure 60% marks in the aggregate are considered Qualified, being meritorious over others who fail to Qualify. Once they secure Qualifying mark, they are put in group 'A' if they secure 80% marks and above and in Group 'B' if they secure marks between 60% to 79%. Within the group, the order of merit is not on the marks obtained but on seniority. If a junior candidate secures 65% marks, but his senior gets 62%, both of them would be put in Group 'B' and the senior with 62% marks, will be above his junior though he has secured 65% marks. The contention of the petitioner, that 'seniority' is already taken into consideration for awarding marks at the viva-voce stage, and again placing them above, the Juniors who have secured more marks, would put the meritorious juniors to a disadvantages. We see some force in this contention, when seniority is an 'element' in awarding marks, the final panel should not be again based

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on seniority consideration. Anyway this is a policy matter, and the Tribunal cannot go into such matters and issue directions, it is for the administration to decide on what norms selections should be made. Having regard to the rules, we hold that the criteria of selection is merit-cum-seniority and that merit is a factor only to adjudge whether a candidate has secured qualifying mark or not, and once he is qualified his empanelment is in order of seniority.

10. If the panel was being formed on the basis of seniority the question to be answered is why was the name of the petitioner put in the panel in the first instance. The explanation on the respondents side is that this was due to an administrative error. The explanation however does not appear to be convincing for the reason that this selection was not first of its kind, there were evidently selections held in the past and the administration cannot plead ignorance of selection rules. The fact that the petitioner was put in the panel would indicate that he obtained the highest aggregate marks in the selection. Was he in the outstanding category-Group 'A' having secured 80% marks. If he was in that category deletion of his name from the panel is not justified, Since this category is considered superior to the other category-Group 'B'. We have called for the records of the selection to verify as to the circumstances resulting in deletion

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of petitioner's name from the panel but in spite of number of opportunities, the respondents failed to place the record before us. We were informed that the record was sent to the Railway Board in some vigilance matters, and hence it could not be produced. We do not accept that this is a valid ground to withhold the record from us. In any case, the department could have obtained it for perusal of the Tribunal. In the absence of the record the question whether deletion of the name of the petitioner from the panel was on valid grounds or not has no satisfactory answer.

11. The other point is on cancellation of the panel. In para 217 of the Railway Establishment Manual it is mentioned that the panel drawn by a Selection Board shall remain current for a period of 2 years from the date of approval of panel of the Competent Authority or till these are exhausted whichever is earlier. The panel in this case consisted of one name i.e. the name of the petitioner and with the appointment of the petitioner on 2.2.1979 the panel stood exhausted in accordance with this para. The contention on the respondents side is that it is always open to the administration to cancel a panel if there was a mistake or administrative error in formation of that panel and that there is no period of limitation set for such an administrative act. The respondents have relied on the

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provisions contained in para 216 (J) of the India Railway Establishment Manual, to support their action (Annexure A-2 of the counter). We have carefully examined this para which reads as under:

"After the competent authority has accepted the recommendations of the Selection Board, the names of the candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there are procedural irregularities and other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel."

The words "If after the formation and announcement of the panel" are significant and suggest that the stage of cancellation of the panel is after announcement of the panel. This para does not cover cases where the appointments are made and the panel is not in operation. In these circumstances we are of the view that it is not open to the administration to cancel a panel which was not current, after more than one year of its implementation, without notice or opportunity to the affected person. In J. Kalpana Vs. Union of India (A.I.R.

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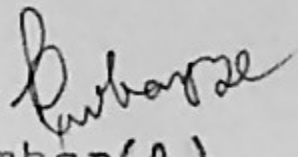
1986 CAT 285) Madras Bench of this Tribunal held that principles of natural justice are violated if a candidate promoted after selection is reverted without notice or opportunity. The applicant in that case was reverted from the post of Telephone Supervisor to the Post of Telephone Operator on the ground that the select list in which her name was included was not correctly formed and the select list was redrawn, in which her name did not figure. The reversion without notice or opportunity in that case was held as violative of principles of natural justice and the order of reversion was quashed. We agree with this decision. The facts in the instant case before us are similar to the case disposed of by the Madras Bench of this Tribunal. In the circumstances, we are of the view that the order of deletion of the name of the petitioner from the panel of H.T.C. dated 27.3.1980 contained in (Annexure 3) and also order of reversion dated 28.3.1980 (Annexure-4) without notice or opportunity are liable to be quashed. The petitioner has been working for more than one year in the promoted post of H.T.C., on regular basis and his reversion to a lower post could be only by way of a disciplinary measure. We hold that the impugned order of reversion dated 28.3.1980 is bad in law, and order of deletion of the name in the panel of H.T.C. cannot be sustained, as the order was passed, when the panel no more existed.


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12. We accordingly quash the orders contained in (Annexures-3&4) of the petition. The respondents are directed to treat the petitioner to be continuing in the post of H.T.C. from the date of his promotion i.e. 2.2.1979 (Annexure 2) with all service benefits. The petition is allowed as above. Parties to bear their own costs.


Member(A)


Vice Chairman

Dated: The 26th March, 1991

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