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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 314 of 1987

Suresh Prasad Choubey Applicant.

Versus

Union of India & others Respondents.

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

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

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1985, the petitioner Suresh Prasad Choubey has challenged the Railway Board's Order No.E(NG)I/83/PMI/45/NFIR of 30.1.1985 enlarging a panel declared on 7.4.1982 and subsequent inclusion of the name of respondent no.3, R.N. Pandey, in the same and the regularization of the respondent no.³ as Hindi Assistant Grade I by an order No.1695 of 6.4.1985 issued by the General Manager (Personnel) (GM(P)), Diesel Locomotive Works (DLW), Varanasi. He has also challenged the Provisional Empanelment of respondent no.4, T.P. Srivastava on the basis of another selection on 29.7.1985, his posting as Hindi Assistant Grade 'I' and calling of the petitioner for a supplementary selection on 9.9.1985 without cancelling the panel having procedural irregularities, and treating him as absent in the supplementary selection. He has ³ from the panel date 7.4.82 prayed for the deletion of the name of respondent no.3 and holding of fresh selection, quashing of the panel where respondent no.4 has been selected and also holding fresh selections.

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2. Briefly the facts, as stated by the petitioner, are that in 1981 a selection was held for two posts of Hindi Assistants Grade I in the DLW, Varanasi. Four persons would have been called, on the basis of 3X formula, the petitioner would have also stood a chance of being called. The panel was finalised on 7.4.1982. On the creation of a new post of Hindi Superintendent and its being filled departmentally as ordered by the Railway Board, the name of respondent no.3 was included in the panel of 7.4.1982 by an order dated 22.2.1985 which permitted enlargement of the panel. This inclusion of the name of respondent no.3 has also been challenged in another application being Registration (T.A.) No.1209 of 1986, Dhani Ram v. Union of India. The reason for enlargement was the creation of the post of Hindi Superintendent on 9.7.1981 and the Board's sanction to fill it departmentally of 29.5.1982. This post was not in existence on 7.4.1982 when the panel was finalised. The petitioner represented against this action but his representations did not receive any response. Subsequently due to death of one person another post of Hindi Assistant Grade I fell vacant and three persons were called for the selection for filling up this post on 17.6.1985. The petitioner could not attend the same due to his sickness. The administration of DLW, however, declared the panel without incorporating the results of supplementary selection which was to be held for him. When the petitioner was called for the supplementary selection he did not appear because according to him the administration had already selected a person and the panel was not cancelled ^{and} though it was illegally declared. The petitioner has

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also challenged the inclusion of the respondent no.4 in the category of Junior Translators in 1973.

3. The Government-respondents have filed their reply in opposition. They have said that the name of respondent no.3 was included in the panel on instructions from the Railway Board. Respondent no.3 had qualified in the selection but could not be put on the panel announced on 7.4.1982 as there were two vacancies and only two names were to be kept on the panel. When the panel was enlarged this was done. They have denied that the petitioner could have had a chance of being considered because he was not in the field of eligibility being ~~only~~ in a grade below the grade from where selection was to be made. He can also not challenge the validity of the selection at this stage, being time barred. In April, 1985 a selection to fill up a vacancy of Hindi Assistant Grade I was notified. The petitioner could not attend the selection on account of his sickness. On ^{by} resumption of duty/the petitioner he was called to appear in the supplementary selection scheduled to be held on 12.9.1985 but he did not attend and this was treated as absence. Respondent no.4 was also senior-most. According to the respondents the petitioner is estopped from challenging the orders of 30.1.1985; 22.2.1985; etc. on account of limitation. For the 1982 panel only four persons were eligible and they were called. The petitioner was not eligible. By a decision of the Railway Board in 1982 a post of Hindi Superintendent which was created in 1981 was also approved to be filled by promotion. The panel announced in 1982 did not take into account this post. It was, thereafter,

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that the Railway Board decided to enlarge the panel published on 7.4.1982. This was conveyed by the Board on 30.1.1985. The representations made by the petitioner have been replied.

4. We have heard the learned counsel for both sides. The learned counsel for the petitioner contended that in 1981 Selection where only four persons were called, six should have been called and the petitioner could have become eligible in terms of the 1978 orders where persons from Gr.III could also be called and in 1985 the petitioner was treated as absent instead of cancelling the provisional panel. These contentions were repelled by the learned counsel for the respondents, who mentioned that in 1981 he did not attend the supplementary selection deliberately and hence was treated as absent and the panel was finalised. No other point was pressed before us.

5. Thus the points that need to be examined are whether the calling of four persons in the 1981 selection was violative of rules and the petitioner should have been called for the selection and whether declaration of the panel in 1985 was against rules and illegal.

6. The Railway Board's letter No.E(NG)61 PML-71, dated 23.10.1961 on the promotion of English-Hindi Translators lays down that for the post of Head Translator Senior Translators with requisite educational qualifications with seven years of railway service, ^{✓ are eligible} Thus it is clear that the post of Sr. Translator which is now designated as Hindi Assistant Grade I was to be filled from amongst Hindi Translators,

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i.e. Hindi Assistant Grade II, who had put in a total of 7 years' service in the real way, i.e. the eligibility was to be decided on a person satisfying both these conditions. At the relevant time when a selection was held in 1981 and the panel was declared in 1982, according to the averments made by the Government-respondents, only four persons were working as Hindi Assistant Grade II and they were the only eligible persons. Therefore, they were called for selection. During the course of arguments the learned counsel for the petitioner had mentioned that the petitioner would also have become eligible if the 3X formula would have been followed by the administration in calling candidates. The plaintiff has also said so in his application. At the relevant time the petitioner was working in lower grade than the grade from which selections were to be made. Since only four persons were working in that ^{3/4} ~~lower~~ grade from which promotions were to be made the administration did not err in not calling persons from the grade next below in which the petitioner ~~was~~ was working. The 1978 letter ^{3/4} ~~in~~ which the learned counsel referred in his submissions at the Bar is applicable only to Scheduled Caste and Scheduled Tribe candidates. It is not applicable to the general community candidates. It is not the petitioner's case that he was within the zone of consideration and, therefore, if six persons were to be called he would have been eligible for appearing in the selection. His claim, therefore, that he should have been considered in the 1981 selection is based on wrong premises and is rejected.

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7. The respondents had finalised the panel for the selection held in 1981 on 7.4.1982. The life of a panel is normally two years or till it is exhausted. Since both the persons whose names found place in this panel got promoted immediately thereafter against the two vacancies, the panel declared on 7.4.1982 got exhausted and did not exist any more. Even on the basis of a life of two years it would have been deemed to have exhausted on 6.4.1984. 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 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-

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respondents' own averment this post ~~fail~~ 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 ~~as total number of posts to be filled~~ which could have been included in the ~~reforms~~ while forming the panel as a result of 1981 selection.

3/ Therefore, we ~~are~~ ^{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, ~~as this may affect the promotion prospects of the petitioner, liable to be set aside~~ and the inclusion of the respondent no.3 in the panel by enlarging it cannot be sustained.

8. As far as the question of forming a panel for filling up a post of Hindi Assistant Grade I due to the death of one of the Superintendents is concerned, we do not find that there was any error on the part of DLW administration in the process of forming a panel. They had called three persons out of which only one person attended the selection and he was declared qualified in the selection. They also ordered a supplementary selection and the petitioner ~~choose~~ not to attend the selection on an excuse that cannot

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justify such an action. If he had any reservations against the supplementary examination he should have attended the examination arranged for him, under protest, and could simultaneously represent his case. He, however, decided to take the law in his own hand and on the plea that as the provisional panel has not been cancelled he declined to take part in the supplementary examination arranged for him on account of his absence from the regular selection on grounds of his illness. This action of the petitioner does not deserve to be condoned. He, therefore, rightly lost his chance by declining to attend the supplementary examination. The Government-respondents have also averred that the person who has been put on panel was the senior-most and there was only one vacancy. The only situation under which the petitioner could have found a place above respondent no.4, who was provisionally empanelled, would have been if he had been declared outstanding. Since he declined to attend the supplementary selection and to prove his merit he cannot now come forward even on the ground that he would have stood outstanding in the selection. There are ^{or not} equal odds for such a thing to happen. Under the circumstances we do not find any justification for interfering with the process of formation of the panel that was announced as a result of the selections held in 1985. The petitioner has also challenged some selections made in 1973. These are hopelessly barred by limitation and the prayer in this regard cannot be accepted and is, therefore, also rejected.

9. In the result and on the above considerations we order that the inclusion of respondent no.3 in the

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panel declared on 7.4.1982 was not correct and, therefore, the order dated 30.1.1985 issued by the Railway Board is quashed. We reject the petitioner's claim that he should have been considered for being called in the 1981 selection not only on the point of limitation but also on merit and we also reject his prayer for cancellation of the panel announced in 1985. The petition is disposed of accordingly. ³ But Under the circumstances of the case/direct the parties to bear their own costs.

Member (A).

Member (J).

Dated: November 20th, 1987.

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