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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 53 of 1987

Surali Ram & others Applicants.

Versus

Union of India & another Respondents.

connected with

Registration (O.A.) No. 52 of 1987

Lalji Ram & others Applicants.

Versus

Union of India & another Respondents.

Hon'ble S. Zaheer Hasan, V.C.

Hon'ble Ajay Johri, A.M.

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

Original Application No. 53 of 1987 has been received under Section 19 of the Administrative Tribunals Act XIII of 1985. Applicants Surali Ram and 24 others are working as Commercial Clerks on the Moghalsarai Division of Eastern Railway. They are aggrieved by an order dated 17.11.1986 issued by the Divisional Railway Manager, Moghalsarai cancelling the panel formed on 1.9.1979 by which they were selected for the post of Commercial Clerks and subsequently promoted in 1980. They have sought relief for quashing the order of 17.11.1986 on the grounds that they have not been given any opportunity to show-cause before the issue of these orders making their services ad hoc in place of regular. The cancellation order is,

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therefore, arbitrary and capricious.

2. There is another Original Application No.52 of 1987, Lalji Ram & 18 others v. Union of India & another, which is also against the same order of 17.11.1986 of the Divisional Railway Manager, Moghalsarai. The applicants in this case are working as Ticket Collectors and they have claimed for the same relief.

3. The point of law involved is the same. The applications are of similar nature. They are thus liable to be disposed of by a common order, hence these are being dealt with together. The orders in Original Application No.53 of 1987 will also apply to Original Application No.52 of 1987.

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4. The facts of the case are not in dispute. In 1979 a selection was held for the post of Ticket Collectors and Commercial Clerks. The applicants were selected by a due process of selection and a panel was formed. They were, thereafter, promoted during January and September, 1980. In November, 1986 the selection held in 1979 was cancelled, and the applicants were told that they will continue on ad hoc basis until a fresh selection is held in which they will have to qualify otherwise they would be sent back to their substantive posts. The respondents' case is that the panel formed on 1.9.1979 was challenged by one Manohar Ram in the court of Munsif Hawali, Varanasi in Suit No.439 of 1979 on the ground that he had been working as a trains clerk and though in the selection he qualified in the written papers, he was not finally selected and some persons, who were not eligible, were selected. The trial court had granted an interim order and ultimately decreed the suit against the present respondents.

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Appeal filed by the respondents was also dismissed. In the suit the relief prayed for was for issue of a permanent injunction restraining the defendants from withholding the promotion of the plaintiff and promoting those, who were ineligible and junior. The judgment in this suit restrained the defendants on both counts. The respondents now contended that the panel, in this way, stood cancelled by this judgment delivered in July, 1980. When the suit was lost the administration started a vigilance investigation on the selection and came to the conclusion that many omissions and commissions were committed and the panel was not formed in accordance with the provisions of rules, therefore, in November, 1986 they cancelled the panel. Since a discreet and secret enquiry was carried out by the Vigilance it was not necessary to inform the applicants. The order, according to the respondents, is not of a punitive nature.

5. We have heard the learned counsel for the parties. Apart from whatever has been said in the application and the reply to the application nothing else was brought out before us. The learned counsel for the respondents reiterated the contention that since the panel was cancelled by the competent authority and it more or less stood cancelled consequent to the judgment in the Suit No. 439 of 1979, the applicants had no case.

6. At annexure '1' of the application is the result of the selection for ^{re formation} ~~reformation~~ of panels of Commercial Clerks and Ticket Collectors. It is clearly stated that the listed staff had been found suitable

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by the Selection Board and placed on the provisional panel which has been approved by the competent authority on 16.6.1979. Thereafter the posting orders were issued and the panels got exhausted by September, 1980.

3/ 7. Panels formed by the Selection Boards are put up for approval of the competent authority and after the same have been approved they are published and notified, and their currency starts from the day they are approved. If ^{for} any reason a panel cannot be finalised, a provisional panel is got approved. Such a provisional panel also needs to be finalised within two years. A panel which has been once approved is not normally cancelled or amended. If after formation of a panel and its approval by the competent authority some irregularities come to the notice and it becomes necessary to cancel or amend the panel this is done after obtaining the approval of an authority next higher to the one that approved the panel. The currency of panel starts from the date it is approved and it normally remains current for a period of two years or till it is exhausted whichever is earlier and an employee who is made to officiate against a non-fortuitous vacancy on his turn in the panel is not required to appear for a fresh selection even if he is ^{not} regularly promoted and the panel expires. Persons, who are promoted on the basis of their position in the panel, can be reverted for general unsuitability during the period of 18 months. The panel in this case was published on 1.9.1979 and it has been cancelled on 17.11.1986, i.e. after a period of seven years after its approval and a period of nearly six years after it expired because all the persons from the panel were promoted by 3.9.1980

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and, therefore, the panel did not exist/^{any more}at the time it was ordered to be cancelled. The contention of the learned counsel for the respondents that the panel stood cancelled due to the judgment in Suit No.439 of 1979 is not based on sound footing. The trial court had issued a permanent injunction restraining the defendants from withholding the promotion of the plaintiff in that case and also from promoting those, who are ineligible and junior. It has not been brought out by the respondents as to who are the ineligible persons and the junior persons, against whose promotions they were restrained by the judgment in that suit. To generalise the conclusion that since it was an injunction against promotion of ineligible and junior persons, therefore, the panel stood automatically cancelled cannot flow from the judgment. The right course of action for the defendants in that suit was to find out who were the ineligible and junior employees, who are incorrectly promoted. Instead a vigilance enquiry was made. It took a good seven years for the vigilance organisation to come to a conclusion by which time the panel had already exhausted and for all practical purposes it did not exist. If some action would have been taken by the respondents, on the trial court's judgment in Suit No.439 of 1979 having become final, against the panel which had been declared by them on 1.9.1979 either by cancelling it or by modifying it in terms of the judgment it would have been another matter but this was not done. The vigilance organisation took seven years to come to a conclusion. It would thus seem that the bureaucratic machine, in the vigilance organisation, a mighty and miraculous machine, worked perhaps by loyal and hard worked men moved

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rather slowly. They were so absorbed with their daily grind that their eyes never got lifted up from the ground. No ray of imagination struck their minds, no spark of initiative sprang from their breasts and the exercise continued at a snail's pace, resulted in a non-existent panel having been cancelled after seven years.

3/ 8. In Narender Chadha and others v. Union of India & others (ATR 1986, 57) the Hon'ble Supreme Court have observed that "where persons have been allowed to function in higher post for 15-20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results". In the instant case the applicants have been officiating, after having been duly empaneled, for a little ^{3/ more} ~~more~~ than seven years and now by an order dated 17.11.1986 they have been told that their appointments have been converted as 'ad hoc'. They were promoted in direct line of their promotion. They have officiated for more than 18 months. Their work has not been reported to be unsatisfactory to a degree so as to compel the administration to return them to their original posts. As a matter of fact there was no question of their being told that they have lost their status of regular promotion after seven years and that they will be reverted if they fail to qualify in the test that was likely to

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be held. They have generated a right for themselves not by virtue of their officiating appointment on ad hoc basis but by virtue of having been regularly promoted. The Orissa High Court in D.B. Jena v. Union of India (SLJ 1983 (2) 28) had held that in that case even though the appointment of the ~~applicant~~ petitioner initially was stated to be stop gap it could not be taken to be stop gap in view of the petitioner's continued service of more than six years. The petitioner must be held to be entitled to the protection of the 18 months rule.

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9. Such being the law and opinions available we do not find that the petitioners could be kept on tenter hooks by a sudden order cancelling the earlier panel and calling them ad hoc ^{and} subject to reversion if they fail to qualify. At least there should be some finality and a person should feel secure in appointment after sometime, but this is not the case here. As we have already said the right course of action to be taken by the respondents was at the time when the trial court judgment become final and not after a lapse of seven years. The applicants have prayed for quashing the order of 17.11.1986 on the grounds that they have not been given any opportunity to show-cause before the issue of these orders making their services ad hoc in place of regular. ~~as have~~ ^{already observed that} The applicants cannot be now ^{because} reverted, not only they have got a protection of the 18 months' rule but also they have not been taken up for unsatisfactory work and they have worked in the post for more than six years. We have also observed that the panel was completely exhausted and did not exist to be cancelled in 1986. The only way the

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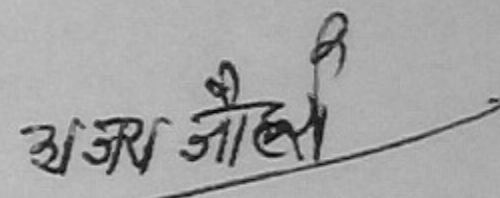
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applicants can be reverted will be by following disciplinary ³⁴⁻~~appeal~~ procedure and not by a simplicitor order cancelling the panel.

10. In view of the above we quash the order dated 17.11.1986. The order does not exist. The applicants, who were promoted regularly, will not be reverted or classified as ad hoc. The cancellation order, of the panel announced on 1.9.1979, is nonest. The application is disposed of accordingly. Parties will bear their own costs. This order will also apply to Registration (O.A.) No. 52 of 1987.



Vice-Chairman.


Member (A).

Dated: September 16th, 1987.

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