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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.No : 6/89
T.A.No.

Date of Decision : 25-1-1999

Shri Dineshchandra L.Shah

: Petitioners

Mr.G.I.Desai

: Advocate for the petitioner

Versus

Union of India

Respondents

Mr.N.S.Shevde & Mr.K.K.Shah

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. V.Radhakrishnan : Member(A)

The Hon'ble Mr. P.C.Kannan : Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment? N0
4. Whether it needs to be circulated to other Benches of the Tribunal?

W3

Shri Dineshchandra L.Shah,
28, Vishrambag Society,
Opp. Pratapnagar Police Ground,
Makarpura Road,
Baroda.

: Applicant

Advocate: Mr.G.I.Desai

Versus

1. Union of India,
(Notice to be served through
The Secretary, Ministry of Railway,
Rail Bhavan,
New Delhi.
2. The General Manager,
Western Railway,
Churchgate, Bombay.
3. Divisional Railway Manager,
Western Railway,
Pratapnagar, Baroda.

: Respondents

Advocates: Mr.N.S.Shevde
Mr.K.K.Shah

ORDER
OA/6/89

Date: 25.1.99

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

The applicant has filed this OA challenging the order dated 28.12.98 of cancelling the panel for the post of Personnel Inspector Grade-III. Earlier the respondents had formed a provisional panel and issued the same vide order dated 7.6.1988. On the basis of the said panel the applicant who was working as Senior Clerk was promoted to officiate as Personnel Inspector Grade III (Annexure A-6). Subsequently the respondents cancelled the panel vide order dated 28.12.88 (Annexure A-2). Accordingly, the applicant was reverted and re-posted as Senior Clerk vide order dated 28.12.1988. The applicant has claimed that the cancellation of the panel and the reversion order of the applicant or the provision of Railway Board Circular dated 4.8.1953 are also arbitrary, capricious, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

The respondents had issued a Notification dated 28.8.1987 inviting applications for forming a panel for the promotion to the post of Personnel Inspector. After the selection the applicant along with one another was placed in the provisional panel for the promotion to the post of Personnel Inspector (Annexure A-5). The applicant was promoted to the post of Personnel Inspector and one Smt.S.P.Trivedi was officiating as Personnel Inspector on ad hoc basis was reverted and re-posted as Senior Clerk vide order dated 7.6.88. Smt.Trivedi was not called for written test as she has not completed requisite period of working as Senior Clerk. The applicant states that Smt.Trivedi filed OA in this Tribunal. Thereafter on the basis of direction from the Tribunal on the basis of direction from the Tribunal show cause notice was issued to Smt.Trivedi and others and final order was passed. Incidentally, it may be mentioned that Smt.Trivedi was considered for the promotion on the serving graduate quota. The applicant claims that due to the OA filed by Smt.Trivedi ,the respondents has cancelled the selection and reverted the applicant. The applicant states that panel for promotion to the post of Personnel Inspector was cancelled without giving opportunity of being heard to the applicant and hence arbitrary. The applicant states that the Respondent Railway Board has issued Circular dated 4.8.1953 laying down guidelines as to the mode of cancellation of or amendment of approved panels. He states that the panel once approved should not be cancelled without reference to the authority next above the one that approved the panel. Copy of the Railway Board Circular as laid down reads as follows:-

"Cancellation of amendment of approved panels.

The Railway Board have come across instances in which panels for the selection posts , approved by duly constituted selection Boards are either subsequently cancelled or amended by the authorities approving of such selections. The Board had given their careful consideration to this matter and have observed that such a practice is open to objection and with a view to have healthy practice, have decided that the panels once approved should not be cancelled or amended without reference to the authority next above the one that approved the panel."

The applicant claims that the panel in question was approved by the respondent No.3 and the same authority cancelled the panel. This is an utter disregard of the Railway Board Circular quoted above, and therefore arbitrary and discriminatory . He also quotes the Rule 218 of Indian Railway Establishment Manual which reads as follows:-

" 218. The retention of the name of panel to be subject to continued suitability – the retention of a Railway servant's name on a panel will be subject to his/her continued suitability for the post in question. Notwithstanding anything to the contrary, the removal of a railway servant's name from panel would require specific approval of the authority next above that which initially approved the panel."

From this, the applicant claims that removal of applicant's name in the panel should require specific approval of the authority next above that which initially issued the panel. In this particular case the respondent No.3 had approved the panel and he cannot by himself cancel the same and he should obtain approval from the Respondent No.2, i.e. the General Manager. Accordingly, action of the Respondent is arbitrary and discriminatory.

The respondents have contested the application. They have stated the panel was cancelled due to some irregularity which was committed in the process of drawing the panel. They have also stated the panel issued vide order dated 7.6.88 was only provisional which could be cancelled. They have also stated that the reference was made by the Respondent No.3, the Chief Personnel Officer, Headquarter on receipt of reply from him the panel was cancelled. Hence according to the respondents, the requirement of getting the approval of the next authority namely; the Chief Personnel Officer was fulfilled that there is nothing wrong in cancellation of the panel. They have also stated that the General Manager is not the next authority to the Respondent No.3 as claimed by the applicant but the Chief Personnel Officer is the next higher authority who has agreed with the respondent No.3. Accordingly, the panel was cancelled. They have also stated that the applicant was only officiating as Personnel Inspector and reverting him to the substantive post does not result in any illegality. They have, therefore, prayed for rejection of the application.

The applicant has filed rejoinder. He has stated that the contention of the railways that the Senior clerks who should not be called for interview is not correct. He has contended that only Senior Clerks working in the Establishment Branch and who has put in five years service are eligible to call for written test for promotion to Personnel Inspector. According to him no senior persons of five years experience were ignored for the test and as such, there was no need to cancel the panel which formed after regular selection. He has also states that the panel prepared was a regular panel. Even though he was promoted on officiating basis that was only a formal nomenclature, and the applicant was promoted on regular basis on the basis of regular panel. He also denied that there is irregularity to form the panel. He also states that he should have been reverted after giving opportunity of being heard.

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During the arguments Mr. Desai learned advocate for the applicant stressed a few points. Firstly, he argued that the petitioner was working in the higher post of Personnel Inspector Grade III on the basis of regular empanelment should not have been reverted without giving him show cause notice or hearing and therefore, action of the respondents is against the principles of natural justice. Secondly, he argued that as per Railway Board letter No. E 52 PM-2-34, dt. 4.8.53 and as per Rule 218 of the IREM panel was formed and once approved it cannot be cancelled without specific approval of the Respondent No. 2 i.e. General Manager, Western Railway who approved the panel. He also alleges that approval of the competent authority was later on interpolated in the order and was an after thought. Hence, he argued that the impugned order dated 28.12.88 Annexure A1 should be quashed and set aside and the applicant should be restored to the original position. He also stated that if it was the case of the respondents to give opportunity to Smt. Trivedi to appear in the selection test and there was no need to cancel the entire panel consisting of two persons and had the panel been notified to include Smt. Trivedi, the applicant would have continued in the higher post. The action of the respondents in quashing the panel is arbitrary without any basis which was affected the applicant adversely. He also stated that the opinion given by the CPO, Western Railway that seniors should be called for and this irrespective experience is not correct as Hon'ble Supreme Court has held that notional promotion from back date does not count for seniority in the case of Union of India & Ors. vs. Bhaskar and Ors. He also states that he is the senior person who was not called for selection. As it was due to the mistake of administration, the employee who had qualified and promoted in the written test would not be panelised. He also quoted the following judgments:

1983 (1) SLJ 459 Shri Ram vs. DI of Schools AIR 1991 SC 309 in which it was decided that appointment without giving opportunity of hearing is violative of principles of natural justice.

Raju vs. KSRTC 1986 (L) SLR 326, according to which before removing the name from the panel, hearing should be given.

Mr. N. S. Shevde, learned counsel for the respondents on the other hand defended that the action of the respondents and states that in so far as the question of reverting the applicant is concerned, the promotion order clearly shows that the promotion was on officiating basis and it means that the applicant could be reverted at any time without any show cause. Hence, there was no illegality in reverting the applicant from the post of Personnel Inspector to Senior Clerk. In so far as the question of getting the approval of the higher authority is concerned, he mentioned that the Chief Personnel Officer,

Western Railway had been approved the matter and in reply to the letter by Respondent No.3 the Chief Personnel Officer who is a higher authority can control the action of the Respondent No.3. Accordingly, the cancellation of the panel is according to the procedure prescribed under the Railway Board Circular.

We have heard both the learned counsels for the applicant and the respondents and gone through the documents. In so far as the question of getting the approval of the next higher authority for cancellation of the panel is concerned, the respondents were directed to produce the relevant files. The relevant file was produced but they could produce only xerox copies of the correspondence between the Respondent No.3 and Chief Personnel Officer, Churchgate, Bombay. The letter written by Respondent No.3 along with the reply given by the CPO, Bombay are reproduced below:-

"Sub:-Selection Board for promotion of class III Staff -PIs

Ref:-D.O.No.E.839/2/20 dt.1.8.88 from SPO (W) CCG to Sr.D.P.O. – BRC

Notification for holding selection for the post of PI was issued on 20.8.87. The panel of PI has already been notified and to employees as per the assessment of vacancies are placed on panel. These two employees were promoted as Sr.Clerks against non-fortuitous vacancies as per their seniority w.e.f. 8.1.82 & 19.1.82 respectively. They had passed the suitability test in Nov.,85. On the date of issue of notification they had completed 5 years service as senior clerks. Smt. Sadhna Trivedi was appointed as a junior clerk on 30.1.80 at Bombay and had come on transfer to BRC Division on 30.6.82 at her own request on bottom seniority. At that time the above mentioned two employees placed on panel of PIs are already working as Sr.Clerks as per their seniority. Later on Smt.Sadhna Trivedi appeared for the post of Sr.Clerks through RRB against serving graduate quota and was posted as Sr.Clerk on 8.7.85. Thus, she had not completed 5 years of service on the date of issue of notification, and was not called to appear in the selection for the post of PI, although she is senior to the above mentioned two employees in the clerical category as per her date of regular posting as Sr.Clerk. On promotion of the above two employees, Smt.Sadhna Trivedi who was working as PI on ad hoc basis was reverted to clerical category.

2. The above subject was discussed with you by Sr.DPO in HQ Office on 2.9.88 along with Dy.CPO (W) and SPO (U) when it was brought out that when a junior is called for the selection of PI Gr.III, scale Rs.425-640®, the senior should also be called irrespective of the fact whether they worked for a period of 5 years or less. In this connection, clarification to the following is requested:-

i) Whether such benefit is admissible for ex.cadre post.

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There are two different modes of induction to the post of Sr.Clerks; one through RRB against serving graduate quota/Direct recruitment quota and the other by promotion of rankers as per seniority-cum-suitability. If the RRB candidates get seniority by virtue of their appointment above the staff who were promoted earlier to their appointment according to their seniority but their suitability test was finalised later can they be given the benefit of this rule on the basis total length of service put in by their juniors .

On receipt of clarification to the above, further action will be taken.

With kind regards,

Yours sincerely,

Sd/-

(Miss. D.C.Daulatjada)

To
Shri P.P.Kunhikrishnan,
CPO (IR) CCG"

Sub:-Selection Board for promotion of Class III staff -PIs.
Ref:- Your D.O.No. ED/ng/1025/2/28 Vol.II dt.14.11.1988

As per rules, any senior who has not completed the required number of year's service in the lower grade, has to be called for the selection, if his junior is called. This rule applies to all selections, whether for cadre post or ex-cadre post. There cannot be separate rules for directly recruited employees and promotees as seniority for both the groups is combined.

Yours sincerely,
Sd/-

(P.P.Kunhikrishnan)

Miss.D.C.Daulatjada,
DPO, BRC"

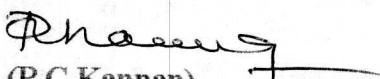
From that it is seen that the respondent No.3 had called for clarification regarding the eligibility of senior candidates who called for selection even though they had not completed required number of service. The reply received categorically stated that it is necessary to call the seniors for selection even though they may not have completed the required number of service. As the Divisional Manager, i.e. Respondent No.3 had not done so, he, on the basis of the advice rendered by the CPO, Western Railway, Bombay issued orders and the panel already prepared which was done without calling the seniors for the selection test and fresh selection were announced. After going through the correspondence of action by the respondent No.3 , we have no doubt that the respondent

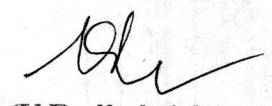
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No.3 had decided the matter to cancel the panel after obtaining the clarifications from the next senior authority i.e. the Chief Personnel Officer, Western Railway. Mr.Desai argued that the CPO had not given specific directions to cancel the panel and the respondent No 3 should not have cancelled the panel without such specific directions. We are not able to accept the point of view that as the direction of the CPO clearly shows that the selection done without calling the seniors whereas it should not be held without calling the seniors for the same. It only follows that the pane prepared without calling the seniors for selection became irregular. The respondent No.3 had no alternative to cancel the selection and consequently cancelled the panel prepared and called for selection. Hence, approval of the higher authority is implied in the letter which he wrote to the respondent No.3 on November 22, 1988. In so far as the question of giving an opportunity of hearing to the applicant before reverting him is concerned, we find as per orders issued of promoting the applicant as Annexure A-5, dated 7.6.88 the candidates were placed on provisional panel and the order dated 7.6.88 Annexure A-6 stated that the applicant promoted and posted to "officiate " as PI Gr.III . If the promotion of the applicant was officiating basis , it does not confer any right on him to continue definitely .It is now well settled that any official working on officiating basis can be reverted without any show cause notice to him. The judgments quoted by Mr.Desai are not relevant to the present case. Accordingly, we see any illegality in reverting the applicant from the post officiating as PS Gr.III to substantive grade of Senior Clerk. Incidentally, it was pointed out by the Govt. Counsel during the discussions that the applicant has changed his cadre and he is now working in the higher post

There is therefore, no basis in the contention of the applicant that he should have been given show cause notice for reversion.

In view of the above, we see no merit in the OA and the same is dismissed. No costs.


(P.C.Kannan)
Member(J)


(V.Radhakrishnan)
Member(A)