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O.A. No. 65 of 1989.

Date of decision :- February 2, 1990.

1. R.N.P. Singh
2. N. Maharana
3. A.K. Mukherjee
4. B.C. Mehata
5. Arjun Prasad
6. B.B. Ghosh
7. K.D. Pathak
8. A.K. Samant
9. P.R. Palla
10. M. Ch. Rao
11. R.C. Mishra
12. U.S. Rao
13. John Tapno

All are TXR S.E.Railway Carriage Foreman,  
Bondamunda, Sundargarh.

... Applicants

Versus.

1. Union of India represented through General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, Chakradharpur.
3. Senior Divisional Mechanical Engineer (C&W) S.E. Railway, Chakradharpur.
4. Divisional Personnel Officer, S.E.Railway, Chakradharpur.

... Respondents

For Applicants - M/s. B.K.Sahoo and S.Misra, Advocates.

For Respondents - M/s. D.N.Misra,  
Standing Counsel (Railways)  
and S.C.Samantaray.

CORAM :

The Honourable Mr. N.Sengupta, Member(Judicial)  
And

The Honourable Miss Usha Savara, Member (Admn.)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT.

N. Sengupta, Member(Judl.) Thirteen persons have made this joint application for the relief of directing the respondents to send them for undergoing the training for the promotional post of Train Examiner ( for short, the TXR).

2. The case of the applicants is that a test was held in December, 1981 for nominating the persons to undergo training in an institute i.e. System Training School at Kharagpur. They and others came out successful in that test. In 1986, ten persons out of those who passed in the test were nominated for undergoing training at Kharagpur. Those persons came and resumed their duties as Train Examiners and their appointments as TXRs have been regularised. In November, 1988, the applicants were nominated for being sent for the promotional post training of two years at Kharagpur. After they had undergone the training for more than a month, they were called back and the reasons for calling them back from the training were not intimated to them. In February, 1989 a notice was circulated asking twenty-five persons to appear at the Selection Test for undergoing the promotional post training at Kharagpur but the names of the applicants were not included in the said list. The grievance of the applicants is that after having held a test and the respondents having nominated them to undergo training after the

results of the <sup>test</sup> were out, the respondents were estopped from calling them back from the training and also for not including them in the list of persons to appear at the Selection Test, the competency to hold such test is also challenged.

3. The respondents in their counter have not disputed there having been some tests in the year 1981 and some of the applicants to have come out successful in those tests but their case is that there were screening tests for the purpose of ad hoc appointment of Fitters Grade I and the other Skilled and Highly Skilled Artisans as TXRs. They have admitted that till 1986 those who were being nominated and deputed to undergo the promotional post training, were being regularised in their services as TXRs, but, however, it was discovered after nominating some of the applicants to undergo training that a wrong procedure was being followed. So, those who had been deputed i.e. nine of them were called back. They have also admitted that initially the names of the applicants were not included in the list of persons to appear at the Selection Test, but later as adequate number of candidates were not available, all the applicants have been included in the list of persons entitled to appear at the test.

4. During the course of hearing, the learned counsel Sri B.K. Sahu for the applicants asked for production of the result sheets of the tests held in 1981, but we <sup>found</sup> ~~found~~ it unnecessary to do so because the respondents have admitted that a majority of the applicants had really passed the screening test and also for the reason which is being stated below.

5. We have heard Sri B.K. Sahoo for the applicants and

Sri D.N.Misra, for the respondents. The area of dispute is limited, namely, whether the test held was a screening test meant only for adhoc promotion to the grade of TXR or was it a test to select candidates for empanelment for the posts of TXRs and secondly, whether by nominating and sending nine of the applicants to undergo training in the institute at Kharagpur were the respondents estopped from calling them back.

6. The first batch of ten persons, as indicated above, were sent in November 1986 for the training and a copy of the letter directing them to join the training institute is Annexure-1 to the application. Nowhere in that letter any reference <sup>- made -</sup> has been, to any test. Similar is the case with the letter nominating nine of the applicants to attend the training course. Annexure-4 is the copy of the letter intimating the proposal to hold a Selection Test for formation of a panel for the promotional post training. Thus it would be found from all the annexures to the application that reference to empanelment of officials was made only in Annexure-4 and in none else. Annexure-B to the counter would show the result of the screening test for stop-gap promotion to the post of TXRs. This makes matters clear with regard to the purpose for which and the nature of the test held in 1981. There cannot be any doubt that the railway authorities wanted to give some stop-gap promotion and for that purpose they held the screening test so that choice may fall on the persons not wholly unworthy. Annexure-C is a copy of the letter dated 11.1.77 with regard to the principles of promotion to the posts of TXRs. From this annexure, it would be found that the available Highly Skilled Grade I and Grade II staff and Mistries are to be subjected to a selection without

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imposing any additional restriction about the educational qualifications and that the field of eligibility for such selection would be three times the number of vacancies. Of course, in Annexure-3 the word 'test' has not been used and therefore, it cannot be said that in fact the rules enjoin the holding of any written test; but never-the-less the promotion to the post of TXR would be on the basis of selection from amongst the persons coming within the zone of eligibility. The ad hoc promotion and the empanelment for promotion are two different things and the procedures are bound to be different. We are, therefore, not impressed by the argument of Sri Sahoo that merely by having qualified in the screening test, the applicants acquired a right to compel the administration to send them to undergo the promotional post training.

7. It has next been urged by Sri Sahoo that once some of the applicants had been nominated and sent to undergo the training, the administration was estopped from calling them back and in support of this contention, he had sought reliance on a decision of the Punjab & Haryana High Court reported in 1973(1)S.L.R. page 1043 ( Udham Singh v. I.G. of Police and others). Sri Sahoo has contended that the facts of this reported case were almost similar to those of the one in hand. He has contended that the petitioners before the High Court were selected and sent for promotional post training but were called back after one and half months of training without assigning any reason. So the order was illegal. True it is that at the first blush one ~~has to~~<sup>is</sup> apt to say that ~~there is~~ - ~~has~~ a great similarity in the facts of the two cases, but really they are not similar. In the case before the Punjab &

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Haryana High Court no reason was assigned as to why the trainees had been called back, but in the instant case, the reason given for recalling the persons who were sent in the second batch for training was that there was some procedural irregularity and this <sup>is</sup> supported by Annexure-C. In the above reported case, the petitioners had already undergone the process of selection, but in the instant case, only the screening test for ad hoc appointment of T.X.Rs. was made. Therefore, we are not able to agree with the contention of Sri Sahoo that the reported case supports the case of the applicants <sup>- that -</sup> the department was estopped from recalling those of the applicants who had been sent for training. In this connection, it would really be profitable to make a reference to a very recent decision of the Supreme Court reported in AIR 1990 S.C. page-100 (Bal Kishan v. Delhi Administration and another). No doubt, the facts of that case were not similar to those of the present one but we are referring to this decision to say that if something, under a mistake, was done, the administration cannot be estopped from rectifying the same. By nominating some of the applicants, no right is vested in them and therefore, after discovery of the mistake, the department was at liberty to recall them.

8. For these reasons, we would dismiss the application but with the direction that the present applicants if they are otherwise qualified, must be allowed to appear at the ensuing test for selection for empanelment for the post of TXR and as some of them had already undergone the training for about a month and half, their cases should be considered sympathetically.

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9. The application is dismissed. No costs.

*H. Lawrence*

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Member (Admn.)

*H. Euph* 2.2.90.

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Member (Judicial)

