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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH, LUCKNOW

T.A. 1063/87  
(W.P.No. 3398/87)

R.L. Dua

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. Justice U.C.S. V.C.)

The applicant, now is said to have been appointed as Chief Draftsman with effect from 1.1.1984 as a result of restructuring. Restructuring has been challenged. The revision of the panel for the post of Chief Draftsman which was issued in February 1982, was issued by the Additional Chief Engineer, Gorakhpur with the approval of Chief Engineer. It appears that 8 posts of Chief Draftsman were notified in the year 1980 calling upon 15 candidates five from general side/and one from Scheduled caste/<sup>5</sup> Tribes. Five posts were to be filled from general candidates and three were reserved for Scheduled Caste and Tribes candidates. Out of 15 candidates four from general side and one from Scheduled Caste were appointed in the selection, after written test and viva voce test having taken place. The record which has been produced shows that one Ali Akbar at serial No. 1 was absent being sick. No. 2 was absent, Serial No. 3 failed No. 4,5 and 6 passed. No. 7 failed in the written test, No. 8 also failed in written test and No. 9 passed and the

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applicant who was at No. 10 and respondent No. 4 ~~is also~~ said to have been passed in the said examination. But in view of the fact ~~of~~ <sup>of</sup> Ali Akbar's absence he could not participate in the said test being sick and the panel of four general candidates and one scheduled caste candidate was drawn which was known as provisional panel. From the counter affidavit it appears that under the rules one more opportunity was to be given to the absentee who was sick. The absentee was called for supplementary examination ~~but~~ he did not or could not appear in the same and as such the panel of only five candidates was drawn. A fresh selection for two posts ~~de-4~~ <sup>de-4</sup> ~~from 1~~ which were reserved for Scheduled Caste and Scheduled Tribe candidates was held in the month of December, 81 i.e one year after the first ~~selection~~ examination. In this test the petitioner succeeded but respondent No. 4 failed. ~~In the second test he failed.~~ First panel was finalised on 20.2.82 and the second was finalised on 30.3.82. Before 3 days prior to the finalisation of the first panel the name of respondent No. 4 was interpolated as fifth one in the panel which is said to have got approval of Addl. Chief Engineer and Chief Engineer under whose direction the first panel was prepared and not by any other superior authority.

2. The contention on behalf of the applicant is that when two posts of S.C. and S.T. were de-reserved and one post could not be filled because of Ali Akbar's absence, his being sick and also in the supplementary test a fresh test for these three posts was taken in which respondent No. 4 also offered himself as a

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candidate. When test for fifth post had already taken place, in the next year it is tragic that by breaking of the rules and canons of law, equity and justice the name of respondent No. 4 was interpolated in the first panel. This interpolation was wholly unwarranted unjustified and not supported by any rule. The Railway administration had fancy for the respondent No. 4 that he having failed in the second test which was in respect of 5th post also made for general candidate they could not find some other way for the same and this could not have been done in this manner. This only reflects the working of the Railway Department. It is true that inclusion of his name as 5th person in the panel obviously was illegal. In view of that illegal appointment, the question of seniority does not arise and he cannot claim seniority over those who were selected in the second test. On behalf of respondents it was contended that as seniority is not in issue and no specific relief in respect of this claim has been prayed, we may make a reference of Ram Swarup vs. State of Haryana (1979, 1, S.C.C., 168), in which case it was held that if a person who is not eligible and is not appointed against the rules but subsequently he becomes eligible, obviously his services cannot be terminated but for the purposes of seniority he is not eligible. His seniority will not be counted from the date of appointment but when he became eligible. In case of respondent No. 4 he is to continue without change by any other person. He will have to go down by other candidates who were selected and whose names found place in the panel which was finalised on 30.3.82. There may not be any specific relief as record may not be available and the legal position cannot be changed. Consequently, with the above observation that so far as these two selections are concerned, the inclusion

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of name of respondent NO. 4 without authority which had no legal sanction he may stand amongst the 8 candidates who were enpanelled, his name will go at the bottom. With the above observations and directions this application is disposed of. No order as to costs.

*transcript*  
A.M.

*ur*  
V.C.

Lucknow Dated: 8.5.91