

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. NO. 111 of 1996

Date of order ✓ -10-1999

1. Unesh Prasad Yadav, son of Sri Ramahtar Rai, resident of village Shivalapar, P. S. Shahpur, District Patna.
2. Md. Anwar Ansari, son of Late Md. Ali, resident of village Jairam, Bazar, P.S. Khagaul, District Patna.
3. Arun Kumar Singh, son of Kapildeo Singh, resident of Loco Colony, Quarter No. 124AB, P.S. Khagaul, District Patna.
4. Santosh Kumar Sinha, son of Mohan Lall, resident of Neora Colony, Qr. No. 672/A, P.S. Khagaul, District Patna.
5. Shirda Ray, son of Shakti Bhushan Prasad, resident of village Nasriganj, P.S. Danapur, District Patna.

.. Applicants

-versus-

1. The Union of India through the General Manager, Eastern Railways, having its office at Fairlie Place, 17, Netajee Subhash Chandra Bose Marg, Calcutta-700 001.
2. The Chief Personnel Manager, Fairlie Place, 17, Netaji Subhas Chandra Road, Calcutta-700 001.
3. The Divisional Railway Manager, Eastern Railways.
4. The Senior Divisional Personnel Officer, Eastern Railways, respondent no. 3 and 4 having their offices at Khagaul, P.S. Khagaul, District Patna.

.. Respondents

*for est*  
Counsel for the applicants .. Shri M.P. Dixit.

Counsel for the respondents .. Shri Gautam Bose.

CORAM: Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Shri Lakshman Jha, Member (J)

ORDER

Hon'ble Shri L.R.K.Prasad, Member (A):-

Through this O.A. the applicants (5 in number) have sought following reliefs:-

- (i) The respondents be directed to consider the claim of the applicants for appointment to regular post under the respondents as a consequence of empanelment of their names after screening for fitness of their appointment.
- (ii) The respondents be restrained from making any appointment unless and until the applicants are not absorbed in suitable posts.

2. The background of the case is that vide notification dated 4.6.1987 (Annexure-3) options were called from wards of retired/retiring Railway staff for engagement as Substitute. The eligibility criteria were prescribed in the said notification which was issued after obtaining the sanction of the General Manager for engaging 128 Substitutes. After necessary screening, a list of 229 candidates were prepared and published on 28.12.1987 (Annexure-4). It was mentioned in the letter that the screening list of the panel will be alive only for one year (upto 17.12.1988). Out of the above list, 113 (UR) candidates, who were also declared fit in medical test, were engaged as Substitute from time to time. Candidates from reserved community as at Serial Nos. 74, 81, 94, 101, 114, 133, 151, 152, 158, 201, 209, 215, 222, 226, and 229 were also engaged as Substitute. After engagement of 128 substitutes, no further engagement/recruitment was done. Subsequently, the Steam Loco shed of Danapur was closed in phases and a large number

of Steam Loco Shed staff became surplus. As these surplus staff were required to be rehabilitated in phased manner, it is the stand of the respondents that there was no question of engaging any further candidates from the panel, as at Annexure-4. Moreover, the live of the said panel is already over. The respondents have stated in their written statement that some of the applicants of the said panel filed O.A. 479 of 1991 in which the Tribunal passed following order on 8.12.1992:-

"Before parting with this application, we would like to observe that these candidates were included in the panel with the avowed objective of giving employment assistance to sons and dependents of low-paid Railway employees who were then retiring or who had just retired. Therefore, the respondents should keep in view that objective and if the workload requires, to get sanction for the posts on which the applicants and others in the panel could be absorbed. The candidates should not be treated as outsiders selected from the open market for a post. Their cases have to be dealt with sympathetically. That would be in tune with the spirit of the scheme under which they were scrutinised and empanelled. Therefore, we would suggest that if the workload requires, the applicants and others in the list may be absorbed as expeditiously as possible."

*Handwritten signature*  
The respondents have pointed out that there was no occasion or requirement for further engaging any of those candidates.

3. It is submitted on behalf of the applicants that as their names have already been empanelled in the list, as at Annexure-4 and in view of the order of this Tribunal dated 18.2.1992 passed in O.A.479/91 (Annexure-1), they are entitled for appointment on a suitable post in the Railways. If the same benefit is not given to the applicants as has been given to other persons listed in the panel (Annexure-4), it would be violative of Articles 14, 16 and 21 of the Constitution. In support of this argument, the learned counsel for the applicants have cited the cases of Ishwar Singh Khatri & other vs. Union of India & others (1987 (4) ATC 932), Shrimati Mridu Rani Mandal vs. Union of India & others (1987 (5) ATC 599), Shrimati Wirmal Kumari & others vs. Delhi Administration & others (1990 (12) ATC 125), Muthuswami & others vs. Union of India & others (1989 (11) ATC 459) and some other cases as listed out in the written argument submitted by him. In support of the claim of the applicants that once the appointment/empanelment has been upheld by the competent court, the respondents are duty bound to implement the same unless it is reversed by the higher court. The learned counsel for the applicants have cited the case of Smt. Manorama Verma vs. State of Bihar & others (1994 (28) ATC SC 709), S. Nagaraj & others vs. State of Karnataka & others (1994 (26) ATC SC 448) and Smt. Deley Devi vs. Union of India & others passed in O.A.76/96 on 4.8.99 by Patna Bench of CAT.

4. It may be pointed out that the application of any judicial verdict is dependent on facts and circumstances of each case as well as the nature of order. It has also to be seen whether judicial order is mandatory or directory order. The matter has been, accordingly, considered.

5. The applicants have themselves stated that out of the panel (Annexure-4), 128 persons including SC/ST have been appointed by the Railway authorities. The appointments have been made upto serial No.140. In addition to this, 7 candidates belonging to scheduled Caste/Scheduled tribe category at Serial no.151, 152, 158, 209, 215, 266 and 229 have been appointed. They have also stated that applicant no.1 is placed at serial no.172, applicant no.2 at serial no.141, applicant no.3 at serial no.145, applicant no.4 at serial no.157 and applicant no.5 at serial no.219. This shows that the candidates who have got appointment are above the applicants excepting some of the scheduled Caste/Scheduled tribe candidates. The applicants have not challenged the appointment of persons who have already been engaged out of the panel as at Annexure-4. Their only prayer is that they should be considered for appointment to suitable posts in Railways in terms of the panel as at Annexure-4.

It may be mentioned that sanction of the General Manager had been obtained for engaging 128 Substitutes who have already been appointed. It is not the case of the applicants that the persons junior to them in the panel have been offered appointment. In support of their claim that they are entitled to get the job in another Unit, the applicants have drawn our attention to Railway Board's letter dated 21.10.1997 addressed to the General Manager (P), N.E. Railway, Gorakhpur, which is attached with supplementary petition filed by the applicants on 19.3.1999. The said letter relates to an order passed by the Chairman, Railway Board relating to regularisation of casual labourer. The said instruction does

appear to be relevant in the instant case.

6. It is noted that the notification dated 4.6.1987 speaks of 128 substitutes. However, after screening, a list of 229 candidates was prepared and published on 28.12.1987 (Annexure-4) which has a life of one year. Out of the said list, 128 Substitutes including 15 from reserved community were engaged. Thereafter no other persons from the list has been engaged. In the meantime due to closure of Steam Loco shed at Danapur in phases, a large number of persons became surplus. As they had to be rehabilitated, the question of engaging any other person from the list as at Annexure-4 did not arise. On the other hand, it is the claim of the applicants that as their names are in the panel, as at Annexure-4, they must be given suitable appointment as a matter of right. This does not appear to be convincing argument made on behalf of the applicants. Even though a larger panel has been prepared, it does not mean that the appointments have to be given as a matter of right. The basic claim of the applicants is that on the basis of the order of this Tribunal in O.A.479/91 on 8.12.1992, their claim for appointment is justified as the life of the panel has been extended in view of the said order. Hence, it is claimed that unless the said order is reversed, the case of the applicants should be considered for appointment to suitable vacant post.

7. It is noted that the applicants had filed M.A. 115/97 arising from the above O.A. praying therein that pending disposal of this application, the respondents be restrained from making appointment of any person from outside the panel of September, 1987 by way of interim order. By its judgment dated 2.9.1998 this Tribunal passed

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following order:-

"Considering these facts, the applicants have failed to make out any sufficient ground for grant of interim order. The prayer for the same is rejected and the M.A. is dismissed."

8. It is not disputed that according to policy-decision, a panel of sons of retiring/retired Railway employees was prepared and necessary notification was issued on 4.6.1987 (Annexure-3) which mentions that the panel was in respect of Loco Shed, Danapur. The panel (Annexure-4) prepared in the light of Annexure-3 also clearly indicated that the same was prepared in respect of Loco Shed, Danapur. This fact was also recognised in O.A.479/91. Therefore, it cannot be said that the panel related to all appointments and not only to Loco shed, Danapur. It has already been pointed out by the respondents that since Loco Sheds were being closed, the surplus staff of the said Sheds were required to be adjusted on priority basis. In that view of the matter, the question of giving work to persons mentioned at Annexure-4 did not arise.

9. Our attention has also been drawn to the order passed by Calcutta Bench of CAT in O.A.968/90 decided on 13.8.1993 and O.A. 472/94 decided on 4.5.1994 and O.A.606/94 decided on 25.5.1995. In O.A.968/90 the Calcutta Bench of CAT observed that the circular No.TPO/ADA/DRM dated 1.11.1989 issued by Senior Divisional Engineer, Adra inviting application from the wards of the railway employees was ultra vires and cannot be given effect and the same was, accordingly, quashed. The O.A.472/94 was also dismissed by Calcutta Bench of CAT, on limitation as well as on merit. In O.A. 606/94 decided on 25.5.1995

*Ans*

this Bench dismissed the application in the light of order of the Calcutta Bench of CAT passed in O.A.968/90.

10. It is well settled law that mere inclusion into a panel does not bestow any right of appointment. It is for the competent authority to take decision keeping in view the facts and circumstances of each case in administrative interest. However, decision of the competent authority can be challenged if it can be proved that such decisions have been taken against the statutory rules or with mala fide intention. In the instant case, we do not find any such things.

11. Regarding right of appointment, it would be appropriate to mention the order of the Hon'ble Supreme Court passed on 30.4.1991 in the matter of Shankarsan Dash vs. Union of India reported in 1991 (17) ATC page 65. In the aforesaid case the Hon'ble Supreme Court held as follows:-

*"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up,*

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the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatendra Kumar v. State of Punjab.

12. In view of the above analysis of the case, we find that this O.A. has no merit. It is, accordingly, dismissed with no order as to the costs.

L.R.K.  
9.10.99

(Lakshman Jha)  
Member (J)

9.10.99

(L.R.K. Prasad)  
Member (A)

Mahto