

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

XOXXXXNo.

T. A. No. 244/87

198

DATE OF DECISION 12.10.1990

Ghanshyam Tularam & Others PetitionerMr. Vivek Deopujari for Mr. V.G. Palshikar Advocate for the Petitioner(s)

Versus

The D.R.M., Central Railway, Nagpur Respondent

and another

Mr. P.S. Lambat

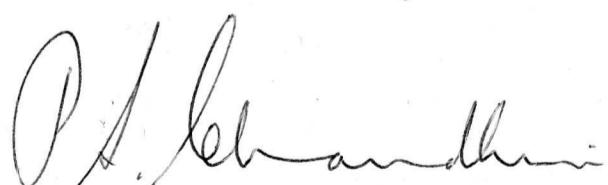
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. S. Chaudhuri, Member(A)

The Hon'ble Mr. S. K. Jain, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? No



(P.S. CHAUDHURI)
M(A1)

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.244/87

1. Ghanshyam Tularam
2. Jaiprakash Babulal
3. Premalal Darshan
4. Bhaurao Bisanji
5. Waman Daulatrao
6. Vinayak Mahadeo

.. Applicants

vs.

1. The Divisional Railway Manager(Personnel) Central Railway, Nagpur.
2. Union of India through The General Manager, Central Railway, Bombay.

.. Respondents

Coram: Hon'ble Member(A) Shri P.S.Chaudhuri

Hon'ble Member(J) Shri S.K.Jain

Appearances:

1. Mr. Vivek Deopujari advocate for the applicants.
2. Mr. P.S.Lambat advocate for the respondents.

JUDGMENT
(Per P.S.Chaudhuri, Member(A))

Date: 12-10-1990

This transferred application originated as Writ Petition No.1733/82 which was filed in the in the Nagpur Bench of the High Court of Judicature at Bombay on 3-8-1982. The High Court by its order dated 21-10-1986 transferred the petition to this Bench of the Tribunal in terms of Section 29(1) of the Administrative Tribunals Act, 1985. The Writ Petition has been taken on the file of this Bench as Transferred Application No.244/87.

(a)

2. In this transferred application the applicants(petitioners) who are working in various capacities on Central Railway are challenging the order dtd. 23-9-1981 by which the provisional panel of thirty candidates for promotion to the post of Commercial Line Clerical Cadre, Gr. Rs.260-430(RS) and Ticket Checking Cadre, Gr. Rs. 260-400(RS) published on 5-8-1980 is cancelled. While admitting the matter the High Court by its order dtd. 14-9-82 directed that future appointments would be subject to the result of this petition.

3. The facts. The applicants(petitioners) were appointed as Class-IV employees on the Nagpur Division of the Central Railway. By a letter issued in October, 1979 the respondents invited applications from amongst eligible class IV employees for the formation of a panel for promotion to Class-III posts in the Commercial Line Clerical Cadre in Gr. Rs.260-430(RS) and Ticket Checking Cadres in Gr. Rs.260-400(RS). The applicants submitted their applications in response to this letter and after undergoing a written and viva-voce test the applicants were placed along with others on the panel for such promotion. The applicants No.1 to 4 underwent the initial training course for Ticket Collectors at the Zonal Training School, Bhusaval in course No.170 scheduled from 11-8-80 to 20-9-1980 and were declared successful. Applicants

No.5 and 6 were sent for initial training of Untrained Commercial Clerks in course No.254 scheduled to be held from 22-9-80 to 12-12-80 at the Zonal Training School, Bhusaval but they were sent back almost immediately after joining the course and without completing it in terms of order dtd. 25-9-1980. Thereafter the impugned order dtd. 23-9-81 cancelling the panel was issued. Thereafter fresh applications were invited from eligible Class IV employees and a fresh selection was held. The employees who passed in this selection were put on the panel and according to their position in the panel were sent for training at the Zonal Training School, Bhusaval in course No.179 from 10-5-82 to 19-6-82.

4. Being aggrieved the applicants filed the present application(Petition) on 3-8-1982. The respondents have opposed the application by filing their written statement dtd. 21-4-89 on 25-4-89. We have heard Mr. V. D. Deopujari holding the brief of Mr. V. G. Palshikar, learned advocate for the applicants and Mr. P. S. Lambat learned ~~advocate~~ advocate for the respondents. It is the respondents case that after the declaration of the results of the written test held in 1979 and 1980 one of the recognised Unions represented that as per Railway Board's letter dtd. 24.11.75 language paper that is part 'A' could be answered either in English or Hindi and since there was no

option was given to the candidates for answering Part 'A' in Hindi, the conduction of written test was irregular. Accordingly, the competent authority had decided that due to the procedural irregularities involved the selection held for promotion from Class IV to Class III initial recruitment grade of office clerks, commercial clerks and ticket collectors was cancelled and fresh selection held. Therefore, the provisional panel issued on 5-8-80 was cancelled and it was decided to hold fresh selection. It is not disputed that this cancellation was done by an authority competent to do so.

5. This Bench had occasion to consider this very point in Syd. Salar Syd. Yasin and ten others v. The General Manager, Central Railway and another (Tr. Appln. No. (N) 228/87) (with which one of us (P. S. Chaudhuri, A.M) was associated). decided on 20-7-1989. In paras 9 and 10 of that judgment we have held as follows:-

"9. Mr. Sanyal's second submission was that the reason why panel had been set aside was non-compliance with the Railway Board's letter dated 24.11.1975. As this letter is important, we reproduce it below:-

"In partial modification to orders contained in Board's letter No. Hindi/74/G20/6 dated 15.11.1974 on the subject noted above, the Board have decided that the question papers in all qualifying and

competitive departmental tests and examinations in offices located in Hindi speaking areas should invariably be prepared in Hindi and English, both the languages.

Further in partial modification to orders contained in para 1 of Board's letter No.E(NG)61CRP/8 dated 29.11.1962 the Board have also decided that from now onwards, it will not be necessary to answer the questions of Part A of the papers in English which is intended to test the working knowledge of the employee of the English language in all departmental tests and examinations to be taken for the promotion of Railway employees in offices located in Hindi speaking areas. Employees are permitted to answer the questions of Part 'A' of the paper either in Hindi or in English language. For this purpose, the working knowledge of Railway employees in Hindi will be considered adequate."

Mr.Sanyal submitted that the question paper for Part 'A' of the written test was in English only and required that part of the paper to be answered in English only. He produced one such question paper dated 28.10.1979 for our perusal. It was this case that this stipulation of answering only in English ran counter to the Railway Board's letter dated 24.11.1975 and that was why the selection had had to be cancelled. But this is not the only condition laid down in the Railway Board's letter on which Mr.Sanyal relied. The Railway Board's letter makes it clear that the directive that question papers should invariably been prepared in both the languages Hindi and English was only applicable in offices located in Hindi speaking areas. Mr.Pathak submitted that ~~in~~ under the Official Languages(Use for Official Purposes of the Union)Rules,1976, the country had been divided into three regions, namely, 'A', 'B' and 'C' Region. 'A' means the States of Bihar,Haryana, Himachal Pradesh, Madhya Pradesh, Rajasthan and Uttar Pradesh and the Union Territory of Delhi. It was his contention that these were the Hindi speaking areas. Region 'B'



means the States of Gujarat, Maharashtra and Punjab and the Union Territories of Andaman and Nicobar Islands and Chandigarh. Region 'C' means the States and Union Territories other than those in Regions 'A' and 'B'. It was his contention that Region 'B' was quite different from Region 'A' and that is why it was classified separately. It was Mr. Pathak's contention that, therefore, Nagpur Division, the headquarters of which is in Maharashtra, did not thus qualify as a Hindi speaking area. Not being satisfied with this we asked Mr. Sanyal to produce us any authority which indicated that Nagpur Division either was or had been declared to be a Hindi speaking area for the purposes of the Railway Board's letter dated 24.11.1975. Finally Mr. Sanyal produced for our perusal a booklet titled 'Compendium of Administrative orders on the use of Hindi' published by Central Railway in 1975. At page 18 of this booklet 'Hindi Speaking Areas on Central Railway' have been listed as under:-

<u>Division</u>	<u>Area</u>
JBP	Entire Division
JHS	Entire Division
BSL	Burhanpur to Itarsi
BSL	Khandwa to Tukhlatabad
NGP	Amla to Itarsi
NGP	Amla to Parasia

This clearly shows that the whole of Nagpur Division is not a Hindi speaking area.

In fact, only a portion, namely, Amla to Itarsi and Amla to Parasia are Hindi speaking areas. We have, therefore, no hesitation in holding that Nagpur Division does not come within category of Offices located in Hindi speaking areas in the context of the Railway Board's order dated 24.11.1975.

10. In this view of the matter, there can be no other conclusion but to hold that there was no obligation to cancel the provisional panel dated 26.6.1980 on the ground that question paper of Part 'A' had not been prepared in both the languages, Hindi and English, and

that the employees had not been permitted to answer the questions of Part 'A' of the paper either in Hindi or in English language. These instructions of 24.11.1975 do not apply to the panel published by Nagpur Division in 1980. What is more, this panel was cancelled after it had been completely exhausted and that too about a year after the concerned employees had been promoted to the higher post."

6. Mr. Lambat sought to distinguish that judgment on two grounds. His first submission was that in that case the panel had been completely exhausted whereas in the present case the panel had not been acted upon. We see no merit in this submission. We had quashed the cancellation of the panel not because the panel has been completely exhausted but because the instructions on which the cancellation was sought to be based did not apply to the panel in question. Mr. Lambat's second submission was that the applicants had appeared in the subsequent selection that was held after the panel was cancelled in September, 1981 but had failed to qualify in the subsequent selection and hence can no longer be deemed to be duly empanelled. We see no merit in this submission also. Faced with this situation that the panel dtd. 5-8-1980 had been cancelled the applicants had no other option but to appear for the fresh selection. It would be appropriate to mention here that the respondents had given no reason whatsoever in their order cancelling the panel. We are therefore unable to find any fault

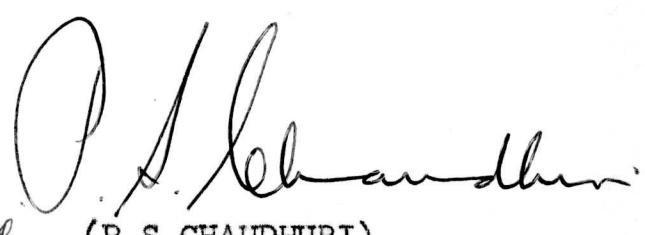
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applicants considering it prudent to appear in the second selection. The mere fact that they were not found suitable cannot take away the rights that accrued to them by virtue of having found a place in the panel of 1980.

7. In this view of the matter we are of the opinion that the application deserves to succeed. We are, conscious of the fact that some persons have been empanelled after 23.9.1981 and subsequently promoted on the basis of such empanelment. We are, therefore, of the view that some protection is required to be given to such employees who might have been empanelled and promoted between the date of impugned order, viz. 23.9.1981 and today's judgment and order.

8. In the result, the Divisional Railway Manager, Nagpur's order No.NGP/P/CR 2/53/Cl.IV to Class III dated 23.9.81 is quashed and set aside. However, no duly empanelled candidate who has already been promoted to the post in question earlier than 12.10.1990 need be reverted to make room for the candidates who are now re-empanelled. In the circumstances of the case there will be no order as to costs.


(S.K. JAIN) 12/10/90
Member (J)


(P.S. CHAUDHURI)
Member (A)