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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
~~TXAxxNoxx~~

172/87

198

DATE OF DECISION 5.7.1990

Shri Anil Kumar & Ors. Petitioner

Shri G.K.Masand Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.C.Master. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice-Chairman,

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

Yes

7/10



(P.S.CHAUDHURI)
MEMBER(A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.172/87.

Shri Anil Kumar M. &
13 others All Trains
Clerks Western Railway,
Bombay Division,
C/o. Shri G.K.Masand
Advocate, 24B Raja Bhadur
Mansion, 3rd Floor,
Hamam Street,
BOMBAY - 400 023.

... Applicants.

V/s.

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay - 20.
2. The Divisional Railway Manager,
Bombay Division Western Railway,
Bombay - 8.
3. Senior Divisional Operating
Superintendent,
Bombay Division Western Railway,
Bombay - 400 008.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri G.Sreedharan Nair,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicants by Shri G.K.Masand,
Respondents by Shri R.C.Master.

JUDGMENT:-

¶ Per Shri P.S.Chaudhuri, Member(A)¶ Dated: 5-7-1990

This application under section 19 of the
Administrative Tribunals Act, 1985 was filed on 9.3.1987.
In it, the applicants were working as Trains Clerks on the
Bombay Division of Western Railway are challenging the
order dt. 24.2.1987 by which the panel dt. 11.8.1986 for
the post of Trains Clerks is held in abeyance till further
orders.

...2.





(20)

- 2 -

2. It is the applicants' case that on 19.6.1985 a notification was issued for holding a selection for forming a panel for the post of Trains Clerks. All Class.IV employees of Traffic (Operating) and Commercial Department having three years regular service and adequate knowledge of English and who are fit in A-3 Medical Rules for TNC category ~~alone~~ ^{alone} were eligible to apply. The applicants applied, were called for the written test and, thereafter for the viva voce test and eventually found a place in the panel dt. 11.8.1986. This panel consisted of 21 names and it was indicated that the names of two ST employees would be interpolated separately. After this empanelment, pending their undergoing training in the promotional course for Trains Clerks at Udaipur, by order dt. 10.9.1986 all the persons in the panel, including the applicants, and, in addition 2 Scheduled Tribe candidates were permitted to work as Trains Clerks on promotion on ad hoc basis. By order dt. 25.9.1986 all these 23 persons were directed to attend the promotional course at Udaipur from 13.10.1986 to 7.11.1986. Of the 21 empanelled candidates, 20 including all the 13 applicants passed the training course. By order dt. 12.12.1986 it was directed that the 20 concerned employees who were selected and trained in the duties of Trains Clerks were posted as Trains Clerks on ad hoc basis. By the impugned order dt. 24.2.1987 it was decided to hold the panel dt. 11.8.1986 in abeyance. In this impugned order it was also stated that:

"It has also been decided that empanelled CL IV staff who are posted as TNC on adhoc basis vide this office order No.E/T/839/6/1 Vol.(xi) of 12.12.1986 and also those who are working as TNC on adhoc basis earlier may be reverted to

...2.

CL IV post and senior class IV employees should be promoted as TNC on adhoc basis in scale Rs.260-400(R)/950-1500(RS 86) in order of seniority. In view of this the following offg. adhoc TNCs are reverted to their original post and posted at the stn. shown against their names".

Being aggrieved the applicants filed the present application.

3. The respondents have opposed the application by filing their written statement. We have also heard Mr.G.K.Masand, learned advocate for the applicants and Mr.R.C.Master, learned advocate for the respondents.

4. Mr.Masand based his case on the proposition that a panel properly formed and fully exhausted by effecting promotions there from cannot be cancelled thereafter for no ostensible reason and without giving due opportunity to the affected persons. He relied on UJJAL KR. CHATTOPADHYAY V. UNION OF INDIA AND OTHERS - 1990(1)ATJ 571 - in which the Calcutta Bench of this Tribunal has held "We also hold that the decision of the C.P.O. to cancel the recruitment notice and the panel without assigning any reason and denying any opportunity to the applicant to show cause was a violation of the principles of natural justice".

5. To counter this Mr.Master sought to impress upon us that there had been an irregularity in the panel by way of not calling all the eligible class IV employees. He also sought to stress that it was open to the respondents to cancel the panel because the promotions therefrom have only been ad hoc promotions. We see no merit in either of these submissions. If some eligible employees have not been called for the selection it is open to the respondents to amend the panel in accordance with the rules. In fact by our interim order dt. 1.5.1987 we had indicated that the respondents were at liberty to hold a supplementary test for eligible candidates who have been left out. By our further interim

...4.



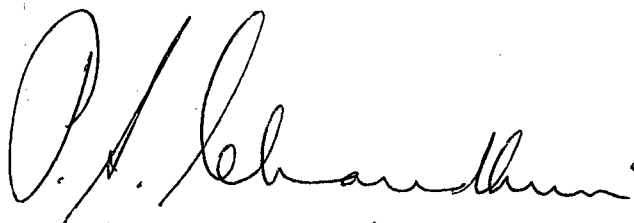
order dated 23.12.1988 we had directed:

- "(i) That the result of the supplementary test shall be announced making it clear that it will be subject to the final result of this case before this Tribunal.
- (ii) That the promotions of those who have passed in the supplementary test shall be made subject to the final result of the case and same shall be so stated in the orders of promotion.
- (iii) Liberty reserved to both sides to agitate on the validity of supplementary test/selection at the final hearing of the case."

But this does not mean that the respondents can cancel the panel without following the principles of natural justice. We also see no merit in Mr. Master's contention that the panel should be deemed to not have been operated because the promotions made there from were ad hoc. It is indisputable that the persons promoted were selected from the panel and not from any other seniority list.

6. In this view of the matter the application deserves to succeed.

7. We accordingly quash and set aside the impugned order dt. 24.2.1987 (Ex. 'G' to the application). When doing so, we make it clear that the respondents are at liberty to amend the panel dt. 11.8.1986 (Ex. 'C' to the application) in conformity with the rules and in accordance with law. In the circumstances of the case, there will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(G. SREEDHARAN NAIR)
VICE-CHAIRMAN.

Before the Central Administrative Tribunal
New Bombay Bench, New Bombay

Stamp No. 156/87

1. Anil Kumar M. &
Thirteen others
All Train Clerks
Western Railway,
Bombay Division,
C/o. Shri G K Masand
Advocate, 24B Raja Bahadur
Mansion, 3rd Floor,
Hamam Street,
BOMBAY - 400023

Applicants

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate, Bombay-20.
2. The Divisional Railway Manager
Bombay Division Western Railway
Bombay-8
3. Senior Divisional Operating
Superintendent,
Bombay Division Western Railway
Bombay-400008.

Respondents

Coram: Hon'ble Member(A) Birbal Nath
Hon'ble Member(J) M.B. Mujumdar

Appearance:

1. Mr. G K Masand
Advocate
for the applicants
2. Mr.
Advocate
for the Respondents

TRIBUNAL'S ORDERS

DATED: 10.3.1987

(PER: SHRI BIRBAL NATH, MEMBER(A))

Heard Mr. Masand, the learned advocate for the
applicants.

1. Admitted
2. Issue usual notices to the Respondents to
file their replies within five weeks with
copies to the applicants. The applicants
are at liberty to file their rejoinder to
the respondents reply, if so desired.
3. The matter should be kept before the Registrar
on 29.4.87 for Directions.

p.t.o

After having heard the learned counsel for the applicants, it is directed that the applicants will not be reverted for a period of fourteen days if the impugned order of 24.2.1987 reverting them has not ^{been} already given effect.

asking them to file reply by 23-3-87
Issue notice to the respondents ^{as to why this} ad-interim relief should not be granted ~~by 23.3.1987.~~

Applicants advocate agrees to serve this order.
Therefore, 'Hamdast' allowed.

2 10/3/87

(BIRBAL NATH)
MEMBER(A)

[Signature]
(M B MUJUMDAR)
MEMBER(J)