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CAT/J/12

ADMINISTRATIVE TRIBUNAL

BENCH

XXXXXXXX

198

517/87.

OF DECISION 25.8.1989.

Pandharinath S. Rawool. _____ Petitioner

D.V. Gangal. _____ Advocate for the Petitioner(s)

Central Railway. _____ Respondent

P.R. Pai. _____ Advocate for the Respondent(s)

Shri Justice P.S. Shah, Vice-Chairman. *P.S. Shah*

Shri P.S. Chaudhuri, Member(A). *PS*

be allowed to see the Judgement? *Yes*

be fair copy of the Judgement? *No*
in other Benches of the Tribunal?

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

Transferred Application No. 517/87.

Pandharinath S. Rawool,
At Baboorao Chawl,
Diwa Station, Dist-Thane & 2 Others.

... Applicants.

V/S

- 1) Union of India,
Through Ministry of Railways,
Railway Board,
NEW DELHI.
- 2) The General Manager,
Central Railway,
BOMBAY V.T.
- 3) The Additional Chief
Mechanical Engineer,
Carriage & Wagon Workshop,
Central Railway, Matunga.
- 4) The Additional Chief
Electrical Engineer,
Carriage & Wagon Workshop,
Central Railway, Matunga.
- 5) The Chief Personnel Officer,
Central Railway,
BOMBAY V.T.

... Respondents.

Coram: The Hon'ble Vice-Chairman, Shri P.S. Shah.

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

Appearance:

Mr. D.V. Gangal,
learned Advocate
for the applicants.
Mr. P.R. Pai,
learned Advocate
for the respondents.

ORAL JUDGMENT:-

Date: 25.8.1989.

(Per P.S. Shah, Vice-Chairman)

The facts leading to this case are not in dispute. An employment notice dated 3.9.1981 was issued by respondent No. 3 for the recruitment for the post of Khalasis(Electrical). A selection board was formed which held its deliberations in or about February 1982. The selection board prepared the panel of 232 candidates. This panel was published on 22.4.1982. The

panel placed petitioner No. 1 at serial number 228, petitioner No. 2 at serial number 230 and petitioner No. 3 at serial number 231. The petitioners were medically examined and found fit on 16.4.1985. It is the case of the petitioners that they were called for recruitment on 29.4.1985, 13.5.1985, 29.5.1985 and 14.6.1985. The father of petitioner No. 3 also wrote letters dated 19.6.1985, 5.8.1985 and 9.8.1985 to the respondents Nos. 3 and 5 requesting that his son be appointed in the post of Khalasi (Electrical). In these letters the father of the petitioner No. 3 mentioned all the facts including the fact that his son was selected for the post. Thereafter, the Advocate's notice dated 4.2.1986 was issued to the respondents and as there was no response the petitioners filed a writ petitioner on 19.3.1986 in the Bombay High Court under Article 226 of the Constitution of India, which writ petition has been transferred to this Tribunal.

2. The respondents have filed the affidavit of Mr. Singh, the Deputy Chief Electrical Engineer (General), Matunga by way of reply to the petition. The petitioner's claim is resisted mainly on two grounds viz. (i) that the petitioners do not have the requisite educational qualification for selection in electrical department and (ii) the panel currency is only of one year which has expired.

3. It has been stated in the affidavit of Mr. Singh that as per Railway Board's letter No. E(NG)II-84/RC-2/21, dated 16.11.1984 the currency of Group 'D' (Class IV) panel in cases of direct recruitment from the open market should be normally one year. Now, as far as this aspect is concerned, it is to be noted that this policy was disclosed in the letter dated 16.11.84 admittedly did not exist earlier. It was for the first time decided that the life of the panel in case of direct recruitment

from the open market should be normally one year. But what is of significance is that admittedly some of the selected candidates in the list were appointed not only after the expiry of period of one year of the selection but also after the letter dated 16.11.1984 relied on by the respondents. It is also evident from the statement made in para 4 of the affidavit that ^{in the} all the selected candidates have been engaged as Khalasis grade Rs. 186-232 upto 1.6.1985 except the three petitioners at merit order No. 228, 230 and 231. In other words this normal rule of one year which came into existence in the year 1984 was not made applicable to atleast some of the candidates in the panel. If that be so, therefore is no justification to discriminate against the petitioners only, though their names admittedly appear in the selection list and are otherwise found fit.

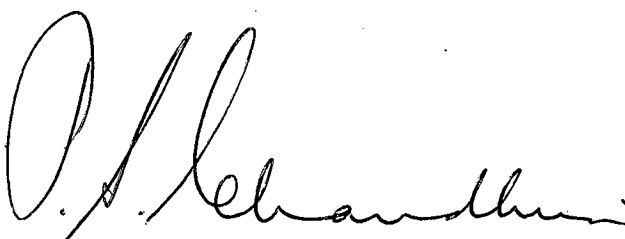
4. As regards the qualification of the ITI Examination, it is not disputed before us that this qualification has been introduced for the first time by the Railway Board's letters dated 31.7.1985 and 16.8.1985. Here again it is common ground that various other candidates who were on the selection list and who have been appointed did not possess this newly prescribed qualification. If some candidates in the selection list are appointed though they did not possess this newly introduced qualification, there is no valid reason for giving a different treatment to the petitioners by denying them an appointment on the ground that they lacked this qualification. The action on the part of the respondents in denying appointment to the petitioners is patently ^{discriminatory and} in violation of the Article 14 of the Constitution. The respondents cannot apply one rule to one set of selected candidates and a different rule to other set of selected candidates like the petitioners. Since we find that the reasons for not appointing the petitioners are not at all justified or valid, in our opinion, the petitioners are entitled

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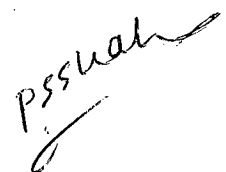
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to succeed in this petition. It was urged by Mr. Pai that a person whose name appears in the select panel cannot claim appointment of as right. In support of this contention he relied on a decision of the Central Administrative Tribunal, Bangalore Bench in Shivaji R. Nimbalkar v/s Divisional Railway Manager, 1(1987)ATLT-524. In our judgment, this decision turns on its own facts and has no application to the facts of the instant case. In the present case, as pointed^{out} above, the selection list was operative in the year 1985 and appointments were made upto the candidates at serial number 227 in the panel; though the respondents are trying to suggest that the panel came to an end on the expiry of one year, at the same time appointments were also made even after the expiry of the period of one year right upto the year 1985. It is further to be noted admittedly 65 persons were appointed after the appointments of the candidates in the 1982 panel. Para 306 of the Indian Railway Establishment Manual provides that candidates selected for appointed^{ment} at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305. ~~above~~. Though it would be possible to argue that this rule would not be applicable when the panel comes to an end by efflux of time, in the present case this panel being kept alive all along, the applicants would be entitled to be appointed to the post in question. Taking any view of the matter, the application must succeed.

5. In the result the petition is allowed. Respondents are directed to appoint the petitioners as Khalasis in the Matunga Workshop in Electrical Section by 30th November 1989. No orders to costs.



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



(P.S. SHAH)
VICE-CHAIRMAN.

(16)

1989

Judgment dt. 25/8/89

Send to parties
on 19/9/89.

Okal:
19/9/89

Judgment dt 25.8.89
referred on Appeal
on dt. 22.9.89

MS
27/9/89