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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

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198

T.A. No. 383/1987.

DATE OF DECISION 8-8-89

Shri U.D. Phulpagar & 5 Others. Petitioner s

Shri Thomas Almeida Advocate for the Petitioner(s)

Versus

Union of India & 3 Others. Respondent

Shri R.K. Shetty, R.No.1 to 3. Advocate for the Respondent(s)

Shri L.M. Nerlekar, R. No. 4.

CORAM :

The Hon'ble Mr. P.S. Shah, Vice-Chairman.

The Hon'ble Mr. M.Y. Priolkar, Member(A).

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? No

4. Whether it needs to be circulated to other Benches of the Tribunal? No

(16)

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

Tr. Application No.383/87.

Shri U.D.Phulpagar, & 5 others.

...Applicants

V/s.

Union of India & 3 others.

...Respondents.

Coram: Hon'ble Vice-Chairman, Shri P.S.Shah,  
Hon'ble Member(A), Shri ~~P.S.Chaudhuri~~.

M.Y.Priolkar

ORAL JUDGMENT:

[Per Shri P.S.Shah, Vice-Chairman]

Dated: 8-8-89

The petitioners have filed this petition challenging the selection and promotion of Respondent No.4 to the post of Loco Power Controller/Assistant Loco Foreman by way of promotion from the post of Motorman held by him.

2. This petition has been filed on 8th January, 1985 and the facts, in so far as they are material for disposal of this petition, may be stated thus. As averred in the petition, the petitioners and Respondent No.4 are working in the Operating Department of the Central Railway in the Loco Power Control branch. The petitioners No.1 to 4 are working in the grade of Rs.700-900 as Junior Loco Inspector/Deputy Chief Loco Power Controller and Petitioners 5 and 6 are working in the grade of Rs.550-750 as Loco Power Controllers. The Respondent No.4 was promoted to the grade of Rs.550-750 as Loco Power Controller from the grade of Rs.550-700 by an office order dated 19.12.1984 issued by the office of the third respondent. It is the case of the petitioners that the said promotion of Respondent No.4 in the Grade of Rs.550-750 is mala fide and illegal and has been granted by the 2<sup>nd</sup> and/or the 3<sup>rd</sup> respondents acting out of the way to oblige Respondent No.4 who is an active worker or office bearer for many years

...2.

of one of the two recognised Unions viz. Central Railway Mazdoor Sangh which is affiliated to INTUC. The contention that the promotion is mala fide or illegal is denied by the respondents and they contend that his promotion is legal and not mala fide. In order to form a panel of candidates for promotion to the post of Loco Power Controller/Assistant Loco Foreman the proceedings of the selection board were held on 21.10.1980. The number of candidates to be placed on the panel were in all 16 (General - 7, S.C. - 6 and S.T. - 3). Before the selection board held the meeting, candidates equivalent to three times the number of vacancies reserved for General and S.C. communities were called for the written test which was held on 2.8.1980, 8.8.1980 and a supplementary on 15.9.1980. From the S.T. candidates one candidate was available; therefore, to provide for two vacancies reserved for this community, 6 un-reserved candidates in addition were also called for the written test. The available S.T. candidate also subsequently refused to take the test, As a result of the written test held on the aforementioned dates 15 candidates from unreserved community and 5 candidates belonging to the S.C. community qualified for the viva-voce. The viva-voce test was held on 21.10.1980 when all the 20 candidates attended, none of the candidates were found by the selection board to be outstanding in either the unreserved or the reserved category. In due consideration of the record of the service, their professional ability as determined in their written test and of the interview and taking into consideration their record of service and overall performance, the committee considered the following candidates as suitable for the placement for promotion to the aforesaid posts of Loco Power Controller/Assistant Loco Foreman in the grade of Rs. 550-750. The panel prepared by the selection board was as under:-

" (a) Un-reserved

Outstanding - Nil.

Other than outstanding

S/Shri

1. M.B.Gadgil,
2. S.G.Pai,
3. M.B.Mohore,
4. F.S.Khurshetji,
5. G.S.Randhawa,
6. R.G.Sharma,
7. Arjun Singh,
8. Mangal Singh,
9. S.S.Sharma and
10. B.Pande.

(b) Reserved Community (SC)

Outstanding - Nil

Other than outstanding:

S/Shri

1. U.D.Phulpagar,
2. S.M.Salve.

(c) (ST) - Outstanding - NilOther than outstanding:

- Nil -

3. The competent authority approved the panel on 31.12.1980. It appears that the name of Respondent No.4 was also approved to be kept on the panel against the un-reserved 7 vacancies for the post of Loco Power Controller/ Assistant Loco Foreman in the grade of Rs.550-750. However, the name of Respondent No.4 was not published in the official Gazette dated 1.3.1981. As stated above there were 7 vacancies in the general category, the names of only 6 were published in the Railway Gazette. Out of the 6 candidates Sl. Nos.1 to 3 declined promotion. The applicant Shri U.D.Phulpagar is one of the two <sup>reserved community (sc)</sup> candidates ~~and~~ whose names <sup>were</sup> ~~was~~ <sup>one</sup> published in the said Railway Gazette. He was to be at Sl.No.7 according to his seniority <sup>in</sup> ~~of~~ the promotional list published <sup>in</sup> ~~by~~ the Railway Gazette on 1.3.1981. One Shri Lakhwara who was entitled to be called for the written test and viva voce at the time <sup>of</sup> selection, was ~~held~~ then serving in Territorial Army.

...4.

As per rules a supplementary selection has to be held for absentee employees. Accordingly, his written test was held on 16.6.1983 and the viva voce test on 12.7.1983. However, he could not be brought in the selection list as he was not found to be outstanding and in the supplementary panel published in the Gazette on 1.10.1983 the name of Respondent No. 4 Shri Arjun Singh was inserted below that of R G Sharma at Sl.No. 7. Neither in the first Railway Gazette dated 1.3.1981 nor in the second Gazette dated 12.7.1983 the names of the remaining 3 selected candidates appeared as there were only 7 vacancies. As regards the first publication it is the case of the respondents that the names of only the first 6 candidates were published because Shri Lakhwara who was ordinarily entitled to appear for the written test and viva voce could not do so in the year 1980 as he was then serving in the Territorial Army with the result that supplementary selection as per the rules was undertaken as mentioned above. The proceedings of the Selection Board held on 21.10.1980 were produced before us and the same shows that the name of Respondent No. 4 was placed at Serial No. 7 by the Selection Board in the general category.

4. The reason for non-inclusion of the name of Respondent No. 4 ~~name~~ in the first Gazette of 1.3.1981, as explained by the respondents is that, the candidate Shri Lakhwara who was entitled to appear for the written test and viva voce was not available and under the rules a supplementary test had to be allowed to him on his being available after being relieved from the job in the Territorial Army. Shri Lakhwara admittedly was junior to Respondent No. 4 in the seniority list. However, the possibility of his selection as an outstanding candidate could not be ruled out. It is under these circumstances that only 6 candidates were empanelled for the promotional post in the first gazette on 1.3.1981 and the name of Respondent No. 4 was not empanelled and kept in abeyance.

5. The facts that <sup>emerge</sup>~~emerge~~ from the above discussion may be summed up as under. The name of respondent No. 4 was placed at serial No. 7 in the panel prepared by the Selection Board on 21.10.1980. His name, however, was not included in the panel in the gazette dt. 1.3.1981, as admittedly one candidate viz. Lakhawara was not available for the written test as also for the viva-voce test <sup>held</sup>~~held~~ before the Selection Board finalised the panel of candidates for promotion. Under the circumstances a supplementary written examination and viva-voce had to be arranged after <sup>his</sup>~~his~~ return from territorial army where he was serving. Accordingly <sup>his</sup>~~his~~ written test and the viva-voce test were held on 16.6.1983 and 12.7.1983 respectively. Reasons for non inclusion of respondent No. 4 in the first gazette <sup>thus</sup>~~thus~~ was obvious. There was a possibility of the candidate Lakhawara being found 'outstanding' whereas none of the earlier candidates including respondent No. 4 who were selected were found outstanding. If Lakhawara was found to be outstanding he would have been empanelled as one of the seven selected candidates in the General Category in the Gazette of 1981. It was, therefore, proper and legal for the authorities to delete the name of respondent No. 4 in the first gazette of the year 1981, though he had a right to be empanelled subject to the claim of Lakhawara, if found outstanding in the test. Since, Lakhawara was not found outstanding, the respondent No. 4 had a right to get his name included in the promotion list published in the subsequent gazette dt. 12.7.1984. No fault under the circumstances could be found with the insertion of the name of respondent No. 4 below that of R.G. Sharma, <sup>with</sup>~~with~~ whose name appeared at serial number 6 in the selection list prepared by the Selection Board in October 1980.

6. It was contended by Mr. Almeida, the Learned Advocate appearing for the petitioner that the supplementary selection has to be ordinarily held within one month from the date of approval of the main panel by the competent authority. It was also pointed out that though Lakhawata had returned from the Territorial Army job and was available for the supplementary selection tests much earlier than 1983, the authorities had failed to hold the supplementary selection for a considerable time. Even assuming that the authorities were not diligent enough to hold the supplementary selection within one month or within a reasonable time from the first selection, that cannot in any manner affect the rightful claim of the respondent No. 4 for the promotion. The petitioners cannot take advantage of the alleged lapse on the part of respondents Nos. 1 to 3 in holding the supplementary selection earlier. In our opinion the insertion of the name of respondent No. 4 in the promotion list published in the gazette dated 12.7.1984 at serial number 7 was proper and legal.

7. Then reliance is placed by the learned advocate on Rule 217 of the Indian Railway Establishment Manual. The rule deals with the currency of the panel. Under clause (a) It is provided in sub-clause (a) of Rule 217 that panels drawn by a selection board and approved by the competent authority shall be kept for 2 years from the date of approval by the competent authority or till these are exhausted, whichever is earlier. It is contended that the panel drawn by the selection board came to an end on 6.2.1981 when promotion orders to the first 6 candidates had been issued. We fail to see how this rule relied on by the petitioners will have any application to the facts of this case. Had Lakhawata been available at the time of first selection for undergoing the written and viva-voce

test and further was not found to be outstanding by the Selection Board then, in the normal course the respondent No. 4 would have been promoted on 6.2.1981 as there were 7 vacancies and his name would have been mentioned at serial number 7 in the selection list. Since the promotion of respondent No. 4 depended on the assessment of the absentee candidate viz. Lakhawara for the purpose of promotion it is impossible to say that the panel was exhausted on 6.2.1981 or after the expiry of the period of two years as provided in the rule. As far as the case of respondent No. 4 is concerned it must be noted that he was already empanelled, subject to the contingency of the absentee candidate being found outstanding. We, therefore, reject the contention of the learned Advocate appearing for the petitioners that the selection of respondent No. 4 was in breach of the provisions of Rule 217(a) of the said rules. We, therefore, see no force in the content<sup>lon</sup> of the Learned Counsel that the supplementary panel was in violation of the Railway Establishment Manual.

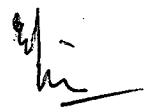
8. It was next ~~urged~~ that the respondent No. 4 had forfeited his right to promotion as he had refused promotion by writing a letter dated 27.12.1983 to the Divisional Railway Manager. This letter was produced before us and we find that the letter was written to the petitioner with a view to <sup>protest</sup> ~~produce~~ against the injustice done to him and not <sup>by way of</sup> ~~for~~ communication of refusing the promotion. In this letter the petitioner has inter alia pointed out that though he was selected in the selection held in the year 1980, his name was included in the panel only in the year 1983 causing <sup>as a protest</sup> ~~the~~ monetary loss to him and stated that, therefore, he is requesting for reversion under protest till his case of promotion directly to grade of Rs. 700-900 is finalised. He also pointed in the letter that he could not be made to suffer because of the administrative



delays. Under the circumstances, it is not possible to accept the submission of the learned Advocate that by this letter the petitioner <sup>refused</sup> ~~denied~~ the promotion and he has forfeited his right to be promoted at this stage.

9. It is lastly submitted by Mr. Almpada that by his letter dated 1.7.1983 the respondents<sup>No. 4</sup> had himself offered to appear for the test in the subsequent selection which would show that he himself had accepted the position that he was not selected earlier. In this connection it is to be noted that the panel prepared by the selection board in which the name of respondent No. 4 is mentioned was not fully published and, therefore, the mere fact that he gave such an application for appearing for the second or subsequent selection can have no importance.

10. In the result we find no merit in any of the contentions urged on behalf of the petitioners. The petition fails and is dismissed with no order as to costs.

  
( M. Y. Priolkar )  
( P. S. CHAUDHURI )  
MEMBER (A).

  
( P. S. SHAH )  
VICE CHAIRMAN.