

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 184/86 and 394/86 &
T.A. No. 23/88

198

DATE OF DECISION 19.4.90.

Dhandu Ram Kadam and others Petitioner(s)

Shri G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Advocate for the Respondent(s)

CORAM

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

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

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?

lrs
(G.Sreedharan Nair) *19.4.90*
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :NEW BOMBAY BENCH
NEW BOMBAY.

Tr.A. 23/88, O.A. 184/86 and O.A. 394/86.

T.R. 23/88

Shri Dhandu R.Kadam and Others ... Applicants.
versus
Union of India and others ... Respondents.

O.A. 184/86

Shri Rama Shankar and others ... Applicants.
-versus-
The Divisional Railway Manager,
Western Railway, Bombay ... Respondent.

O.A. 394/86

Shri Rupamal T and 21 others ... Applicants.
versus
Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicants - Shri G.S.Walia, Advocate.

For the respondents- Shri F.C.Marler, Advocate.

Date of hearing and Judgment- 19.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

Tr.A.23/88 relates to the Writ Petition No. 1152 of 1981 filed in the High Court of Bombay which has been received on transfer. The said application was heard along with O.A. 184/86 and 394/86 and all these applications are being disposed of by a common order.

2. On 8.12.1969 the Assistant Commercial Superintendent, Bombay Central, wrote to the Station Masters Church Gate-Virar, inviting applications from Class-IV staff for the post of Coach Attendants. It was stated in the letter that it has been decided to hold a suitability test for the posts of Coach Attendant in the scale of pay of Rs. 75-86 and that the candidates will have to appear for selection

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before a Selection Committee to adjudge ~~as soon~~ their suitability to work as Coach Attendants. It was further stated therein that " Class-IV staff CCG-VR Section in scale Rs. 70/85(A) of Commercial and Transportation Departments are eligible for these posts".

3. The case of the applicants in Tr. A. 23/88 is that pursuant to the aforesaid letter they submitted applications and they were declared eligible to appear for the suitability test by the letter issued by the Assistant Commercial Superintendent on 3.12.70. According to those applicants, interview was held on 23.2.1970 following which appointment letters were issued to the persons " who were found suitable and were promoted". They have produced the letter dated 6.4.1970 wherein it is stated that they are promoted to officiate as Coach Attendants. Though it is stated in that letter that the officiating promotion is purely on adhoc basis, these applicants would allege that since the promotions were made after ~~regular~~ ^{up} regular suitability test~~s~~, mention of the word 'adhoc' is irrelevant. The stand taken by them is that by the aforesaid letter they have been regularly promoted as Coach Attendants.

4. The original relief claimed by them when the writ petition was filed was to treat them as they have been regularly appointed as Coach Attendants, and to prohibit the respondents from holding any further suitability test for the post~~s~~, or to compel them from appearing for such tests.

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5. In the reply filed by the respondents, it is stated that the selection conducted pursuant to the notice dated 8.12.69 was scrapped since one of the Labour Unions represented that the staff working beyond Virar on the non-suburban Section should also be considered for promotion to the posts of Coach Attendant and applications from such staff should also be entertained, in view of which a fresh suitability test was decided to be conducted ~~by~~ calling for applications from the non-suburban staff as well. Accordingly, a fresh letter inviting applications from both the sub-urban as well as the non-sub-urban staff was issued in May, 1971. It is pointed out that all these applicants also applied to take part in the said test; but since they were not found eligible on the basis of their seniority position they were not considered. The respondents have further stated that pursuant to the aforesaid test which was conducted in July, 1971, 51 candidates were selected and the panel was declared by the letter dated 30.10.1971. It is contended that in view of the aforesaid selection, the selected candidates were promoted and by the letter dated 16.5.1972 these applicants who have been allowed to work against the posts purely on an adhoc basis were reverted. However, it is stated that on the intervention of the Labour Union, the reversion was not implemented and these applicants were being utilised as Coach Attendants against leave and sick vacancies. The respondents have specifically

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contended that by the letter dated 6.4.1970 these applicants were promoted only on adhoc basis and they have not acquired any right to the posts of Coach Attendant. It is stated that actually no panel itself was drawn up and these applicants were never empanelled for the posts of Coach Attendants.

6. After the respondents filed their reply, these applicants have amended the application by deleting the relief with respect to the declaration that they have been regularly appointed as Coach Attendants, and substituting a fresh relief for a direction to the respondents to withdraw the order scrapping the panel formed pursuant to the suitability test conducted on the basis of the letter dated 8.12.1969, and on revival of the aforesaid panel to regularise the services of these applicants in the posts of Coach Attendants.

7. While this matter was pending before the High Court of Bombay, an order of injunction was issued at the instance of the applicants, restraining the respondents from compelling these applicants from appearing for the suitability test proposed to be held in the year 1981 or from disturbing their existing position. It appears that in view of the aforesaid order of injunction, since regular selection for the posts of Coach Attendant could not be held, ^{because} if it is held without allowing these applicants to participate, it will affect them, the respondents proposed to form an adhoc panel of Coach Attendants and for that purpose a notification

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was issued inviting applications from all eligible employees working in the scale of pay of Rs. 196-232.00. It was at that time that ~~such~~^{certain} an employees already working in the scale of pay of Rs. 200-250/-, which is the scale of pay of the post of Coach Attendant, staked their claims for consideration for promotion to the post~~s~~ of Coach Attendant, and since the respondents did not allow them to take part in the suitability test intended for the creation of ^{the} adhoc panel they have filed O.A. 184/86 and 394/86 wherein they pray for a direction to the respondents to promote them as Coach Attendants or to direct the respondents to call them as well for selection to the post~~s~~ of Coach Attendants. In those applications, the respondents resisted the claim on the ground that since the said applicants are already in the scale of pay of Rs. 200-250, they are not eligible to be considered to be included in the zone of consideration for appointment as Coach Attendants. It is further stated in that reply that the proposal to form an adhoc panel was on account of the order of injunction issued by the High Court of Bombay, referred to earlier.

8. Advocate Shri G.S.Walia ~~while~~ appearing on behalf of these applicants, urging the claim put forward in Tr.A. 23/88, emphatically submitted that in view of the selection conducted pursuant to the letter dated 8.12.69 and the promotion allowed to the applicants in that application they have acquired a right to the post~~s~~ of Coach Attendant~~s~~, and that the scrapping of the selection is illegal. It was stressed by him that when a decision

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was taken in 1969 that only the Class-IV staff in the Church Gate-Virar Section are eligible to be considered for appointment to the posts pursuant to which these ^{Certain} applicants and ~~such~~ others were declared to be eligible for ^{the} suitability test, and they were promoted to the posts of Coach Attendants, which posts they are holding, the respondents were not in order to enlarge the zone of ^{employees} eligibility to Class-IV working outside the suburban section and making a fresh selection. It was submitted by him that on no account can these applicants be compelled to participate in such a fresh selection. It was highlighted that Rules relating to the selection cannot be altered to the detriment of these applicants who have been considered in accordance with ^{the} Rules that were then in existence.

In support of this proposition reliance was placed by him on the decision of the Supreme Court in *Y.V.Rangaiah & ors v. J.Sreenivasa Rao*, 1983 SCC(L&S) 382 and the decision of a Bench of this Tribunal in *Karnail Singh v. Delhi Administration*, 1987(2)(CAT) 177

9. We have ^{given} ~~carefully~~ thought to the submissions of the counsel of the applicants, but we are not impressed.

10. It is settled that when a person is selected to a post and appointed therein on the basis of the extant rules, any alteration of such rules cannot operate to his detriment. In Rangaiah's case, it was held that ~~the~~ vacancies that arose in the ^{post} position prior to the amendment of the Rules have to be filled up only on the basis of the Rules as they existed before the amendment. In Karnail Singh's case it was held that the administrative instructions cannot have retrospective effect.

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11. The proposal for filling up of the posts of Coach Attendants, by the letter dated 8.12.1969, is not seen to have been based on any specific rule or instruction of the Railway Board. ~~Nor does it seek~~ ^{as} ~~that~~ from the letter that the vacancies were confined to the Church Gate-Virar Section. However, the Assistant Commercial Superintendent who issued the letter stated therein that the Class-IV staff in the Church, Gate-Virar Section in the scale of pay of Rs. 70-85 of the Commercial and Transportation Departments are eligible for these posts. Before the selection was finalised and the final list was prepared the Labour Union rightly raised the objection that it cannot be confined to the Church Gate-Virar Section and that the eligible candidates of the entire Division have to be considered. It was in view of this ~~petition~~ ^{objection} that the selection was not finalised and empanelment was not made. At the same time, in the exigency of the Administration, as the vacant posts of Coach Attendants could not be left unfilled, the order dated 6.4.1970 was issued permitting the applicants in Tr.A. 23/88 and certain others to officiate as Coach Attendants, clearly indicating in the said order that the officiating promotion is purely on an adhoc basis and will not confer on them any claim for permanent promotion. It is significant to point out that the order proceeds to state that it does not mean that the names of the persons mentioned therein are placed on the panel. From this order itself it is clear that the selection was not finalised and no empanelment was made. Following this, steps were taken for filling up the posts inviting applications from the entire Division and the letter in that respect was issued in May, 1971. A claim was made by these applicants ~~for~~

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for participating in the suitability test, but in view of their seniority position in the Division they were found not eligible. The suitability test was conducted and those who were empanelled were promoted as Coach Attendants by the order issued in January, 1972, and by the same order the applicants in Tr. A. 23/88 were reverted to accommodate the regularly selected candidates. However, on the intervention of the Union the reversion order was not implemented and these applicants were accommodated against the leave vacancies.

12. From what is stated above, it is clear that this is not a case where a selection has been made on the strength of an existing set of Rules or instructions, a panel prepared based on the selection, and appointments made. As such, the proposition of law enunciated by the counsel of the applicants buttressed by the decisions cited by him can have no application. What emerges from the records is that the Assistant Commercial Superintendent who initiated the selection process, ^{initially} confined the zone of consideration to the Church Gate-Virar Section, but before finalisation of the selection, on the intervention of the concerned Union, the proceedings were scrapped and were commenced *denovo* by rectifying the injustice that was committed so far as the non-suburban section employees are concerned. So long as the applicants in Tr. A. 23/88 have not been appointed to the posts as a result of the selection initiated by the letter of December, 1969, ^{GLC} they cannot successfully resist scrapping of the selection proceedings, which, be it noted, was done not arbitrarily or capriciously, but

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to meet the doctrine of equality of opportunity, as the ^{the} Class-IV staff outside sub-urban section were ^{earlier illegally} denied the opportunity to take part in the suitability test.

13. The relief claimed by the applicants in Tr.A.23/88 for withdrawal of the order ^{scrapping the panel} of appointment of Coach Attendants, on the face of it cannot be allowed, for the very order under which they have been promoted on ad hoc basis as Coach Attendants clearly shows that they have never been placed on the panel. Assuming that a panel was prepared pursuant to the selection, so long as no appointment was made based on the said panel, the applicants cannot question ^{the} scrapping of the panel. More so, when they staked their claims for taking the fresh suitability test that was proposed to be held in the year 1971, enlarging the zone of consideration to the entire Division, and because the order reverting them so as to accommodate the regularly selected candidates pursuant to the 1971 selection is not under challenge. ^{That} order was issued as early as in the year 1972.

14. Placing reliance on the decision of the Ernakulam Bench of this Tribunal on which one of us (G.Sreedharan Nair, Vice Chairman) was a Member in P.Pitambaran v. Sr Divisional Personnel Officer [All India Services Law Journal 1990(1)(CAT)256], it was argued by the counsel of the applicants that without reference to the General Manager, the Assistant Commercial Superintendent was not competent to cancel the selection ^{order}. The said decision has no application to the facts of this case, for clause(c)

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of paragraph 213 of the Indian Railways Establishment Manual based on which the decision was rendered does not apply to the instant case. What is ordained there is that promotion to selection posts shall be made by the competent authority in accordance with the recommendation of a Selection Board and if, in any case, such an authority is unable to accept the recommendation a reference shall be made to the General Manager, who may, if necessary^k constitute a fresh Selection Board at a higher level and whose decision in the matter shall be final. This is not a case where the competent authority scrapped the selection on the ground that he was unable to accept the recommendations of the Selection Board, but as pointed out earlier, it was solely on the ground that persons eligible ^{dated 3/7-5-1971 (Ex. I) &} in accordance with the letter ^l were denied the opportunity to take part in the selection by the action of the competent authority itself.

15. It follows that the applicants in Tr.A. 23/88 are not entitled to any of the reliefs claimed therein.

16. Incidentally, it may be observed that though by the amendment of the application^s a prayer has been made for declaration ^l of sub-clauses (d) and (e) of Clause(2) of Article 323-A and Clause (3) of Article 323 of the Constitution and the Administrative Tribunals Act, 1985 itself

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are null and void, Neither that relief, nor the relief relating to the declaration that the location of the Additional Bench of the Tribunal at Konkan Bhavan, New Bombay is illegal, was, in all fairness, not pressed by Shri G.S.Walia, counsel of the applicants.

17. O.A. 184/86 and O.A. 394/86 have to be closed as having become infructuous in view of the ~~above~~ decision which we have delivered in Tr. A. 23/88, because, according to the respondents the proposal for creation of an adhoc panel was made only because of the order of injunction issued by the High Court of Bombay in the writ petition which was the subject matter of Tr.A.23/88. Now that the Tr.A. 23/88 has been finally disposed of, it is needless to state that the order of injunction is no longer in force, so that the respondents are at liberty to take steps for filling up the posts of Coach Attendants on a regular basis by preparing a regular panel in accordance with law.

18. These applications are disposed of as above.

19.4.90
(M.Y.Priolkar)
Member(Admn)

19.4.1990
(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
19.4.90.

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