

TRF 522/86
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.No.201/86.Tr.522/86.Tr.474/86 & Tr.2/87

Pran Nath Kalra,
Executive Engineer(C),
Central Railway Quarter
No.D/260,in front of
Rly.Workshop Gate,
Dr.Babasaheb Ambedkar Road,
Parel,Bombay - 400 012.

.. Applicant in O.A.No.201/86

Jestha Nand Madan,
Divisional Engineer,
B-4,Railway Officers Colony,
Central Railway,
Jhansi - 284 001



.. Applicant in Tr.No.522/86

Mahadeo Prasad Srivastava,
Executive Engineer,
R.B. V,Behind Railway Dispensary,
Station Road,
Agra Cantt.

.. Applicant in Tr.No.2/87

Chhoteylal Gupta,
Railway Officers Quarters,
Bhawan Chawl,Vishnu Nagar,
Dombivli(W),
Dist.Thana - 421 202

.. Applicant in Tr.No.474/86

v/s.

General Manager,
Central Railway,
Bombay V.T.

.. Respondent in all the
above applications.

Coram: Hon'ble Member(A) Ajay Johri
Hon'ble Member(J) M.B.Mujumdar

Appearance:

- 1) Applicants in person.
- 2) Mr.V.G.Rege,
Advocate for the
Respondent.

JUDGMENT

Date: 19-8-1987.

(Per Ajay Johri,Member(A)

O.A.201/86

This application has been received under
section 19 of the Administrative Tribunals Act 13 of

1985. In this application the applicant P.N.Kalra who is presently working as Executive Engineer on the Central Railway has prayed for incorporation of his name at Sr.No. 16 immediately above that of Shri R.A.Dubey, in the 1973 panel of selected Assistant Engineers Class II which was notified on 1-9-1985 in the Central Railway Monthly Gazette No.9 at page 43. He has also prayed that based on this incorporation the promotion of the applicant be regularised and treated as one continuous service with effect from 2-6-1976 for all purposes including payment of salaries etc. and seniority for further promotion and other allied matters.

There are 3 other cases which involve similar point of law and which are amenable for disposal by the order in application No.201/86 mentioned in para above. The details of these cases are as follows :-

- (1) Tr.Application No.522/86: J.H.Madan v.G.M. Central Railway:

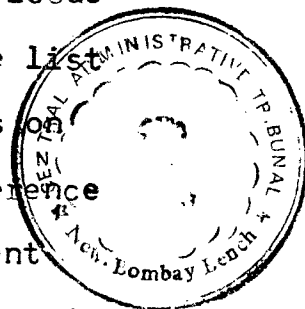
This case has been received on transfer from the Principal Bench of the Tribunal and has been listed under Tr.Application No.522/86. The applicant in this case has challenged the same Gazette Notification of 1-9-1985 and prayed for incorporation of his name at Sr.No.17 in the 1973 panel and based on the incorporation of ^{it} this name for regularisation of his promotion and treating ^{it} as one continuous with effect from 11-6-1976 for all purposes.

- (2) Tr.Application No.2/87: M.F.Srivastava v. G.M. Central Railway.

This application has also been received on transfer from the Principal Bench and has been registered as Tr.Appliation No.2/87. Here also the Gazette Notification of 1-9-1985 which has been challenged in the application under disposal

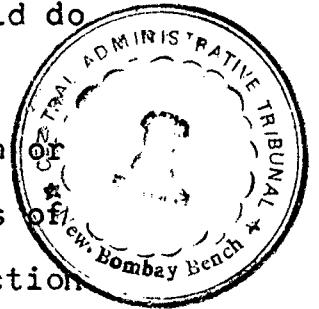
has been challenged and the prayer made is similar to the above two applications for incorporation of the name in the panel of 1973 above that of Shri R.A.Dubey and based on that incorporation the regularisation of promotion with effect from 11-6-1986 etc.

In the third case Tr.Application No.474/86 C.L.Gupta v/s. Union of India which is suit No.1578/82 received on transfer from the City Civil Court, Bombay under section 29 of the Administrative Tribunals Act 13 of 1985, The Plaintiff has sought for the reliefs of issue of a decree of declaration that he is second in the list of seniority of Gazetted establishment published as on 1st July, 1976 and is entitled to promotion in preference to any other employee of Civil Engineering Department to the Class-I Executive Engineer as also for issue of a permanent injunction restraining the defendant from granting any promotion in violation of the list of seniority maintained by the defendant for July, 1976. The Plaintiff in this case has submitted on 15-1-1987 some additional facts and has made additional prayers for relief. These prayers are similar to the prayers made in the other three cases which have been mentioned in the paras supra. The plaintiff, in the additional facts, has brought out that in his case although he and Shri R.A.Dubey had appeared in a selection held in the year 1980 ^{or and} but R.A.Dubey had failed ^{or but} and in spite of that the Bombay High Court Nagpur Bench passed orders to give him due panel position in the panel of selected candidates issued in 1973 on the basis of his position in the shadow panel and therefore he should ^{be} be entitled to the same relief as was made available to Shri R.A. Dubey consequent to the judgment of the Nagpur Bench of the Bombay High Court.

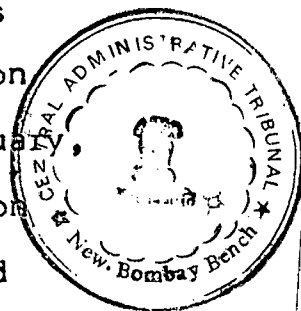


The facts in the above cases are not in dispute. In 1973 a panel of 15 persons was to be formed for promotion as Assistant Engineer Class II. In accordance with the rules, then existing, candidates six times the number of vacancies had to be called for the selection. In addition Graduate Engineers who had completed three years of service and were working in the Class III posts in the department were also to be given a chance to appear for the examination in addition to the number of candidates which were to be called on the basis of 6 X Formula. Accordingly 90 persons according to the seniority, which was equivalent to 6 times the number of vacancies, were called for the test and 28 Graduate Engineers who were working in the department and who were eligible were also given the chance to appear in the same. As a result of the selection a merit list was prepared classifying the candidates who had qualified in accordance with the grading of outstanding, Very Good and Good. Out of this, names of first 15 were put on the panel. Subsequently there was a requirement to make adhoc officiating arrangements to fill up some more vacancies after the panel of 15 had exhausted and the respondents promoted 5 persons including the 4 applicants in these adhoc arrangements. They picked up these names from the merit list which were prepared by them consequent to the 1973 examination. Sometime after this selection had been held, by a notification dtd. 31-7-73, amendment was made in the Indian Railway Department of Civil Engineering Assistant Engineers Class II Recruitment Rules, 1965. By this amendment the selection was broken up into two parts. 75% of the vacancies were required to be filled by promotion through selection of permanent Class III staff of the department and 25% of the vacancies were to be filled through a limited departmental competitive examination which was open to all

permanent Class III staff in the technical categories upto certain grades and above who have put in atleast 5 years service in the grade. This amendment mainly affected the Engineering Graduates who earlier, were, allowed to appear in the selection along with the permanent Class III staff beyond the number who were required to be called for filling up of the vacancies, but with this amendment now they could do only take their chance if they came within the eligibility list for the 75% vacancies selection or alternatively/additionally for the 25% vacancies of LDC(E). After the 1973 selection the next selection was ordered in the year 1976. The applicant J.N.Madan, R.A.Dubey and the applicant C.L.Gupta were not eligible to appear in accordance with the amended rules. The applicant P.N.Kalra failed in this selection while applicant M.P.Srivastava was the only person who qualified. The next selection was held in the year 1979 for filling up 75% of the vacancies and applicants P.N.Kalra and Madan qualified in this. Applicant C.L.Gupta and one another person R.A.Dubey who were not eligible for the 75% examination appeared for the 25% LDC(E) examination which was a part of the 79 examination and Shri C.L. Gupta qualified but R.A.Dubey did not qualify. When Dubey did not qualified he was ordered to be reverted, and against this reversion order he filed a Writ Petition No.168/81 in the Bombay High Court Nagpur Bench. A stay was granted which prevented the reversion of Dubey and ultimately by the decision of the Bombay High Court the reversion order was quashed. In para 8 of this judgment it was mentioned that the respondents had prepared a shadow panel by the same process of the selection and further appointments were made from this panel. The High Court therefore did not accept the submission that the petitioner did not have the eligibility necessary for



enabling him to obtain the promotional post. Further in para 9 of the same judgment it was mentioned "It is difficult to see any justification for the respondents plea that the petitioner had not been properly empanelled and could not have been regarded as eligible for appointment in the promotional post except ^{or on} ~~an~~ _{an} ^{ad hoc} basis.....It is difficult to see any merit in this contentions because having regard to the process of selection the petitioner evidently had qualified for promotion as he had passed the examination and had been appointed to the promotional post, solely on the basis of his success at the test prescribed for the selection. That panel was to last until the next selection. Upon a consideration of all these factors, we find that the order reverting the petitioner cannot be justified in the face of the rules governing the promotions and must, therefore, be regarded as arbitrary." It was under these observations that the Bombay High Court quashed the order of reversion of the petitioner, in the ^{of} case ^{of} R.A. Dubey ~~vs~~ dtd. 1st January 1981. This judgment was contested by the respondents; Union of India, but their Special Leave Petition was dismissed by the Hon'ble Supreme Court of India on 29-4-1985 (SLP 2365/85) Consequent to this the respondents gave R.A. Dubey a position in the panel which was prepared by them on 1-9-1975 and he was placed at Sr.No.16 i.e. below the 15 persons who were already placed in the panel. It was this decision of the Bombay High Court and the action taken by the respondents that has become the cause of the grievance for the applicants in this petitions.



3 in these petitions
The petitioners_λ are now requesting for the same relief as has been granted by the Bombay High Court Nagpur Bench to Dubey, i.e. their promotion on the basis of having qualified in the 1973 ~~ex~~amination and ^{an}_λ having been promoted on adhoc basis by virtue of their name being in the merit list (shadow panel) of the test held in 1973.

P.N. Karna + C.L. Dasgupta

We have heard the applicants and the learned counsel for the respondent. The applicants made the submissions that; they should also be put in the panel announced on 1-9-1975 in the C.R. Gazette 544 at Sr.Nos. 16,17,18 and 20; that their names being in the order in which they appear in the merit list and they should be given the consequential benefits in respect of further promotions etc. by virtue of revision of seniority list on the basis of this empanelment. The learned counsel for the respondent, however, has repelled this statement on the point that the applicants cannot claim benefits which have been given to R.A. Dubey by the Bombay High Court Nagpur Bench as they were not a party to that case. According to the learned counsel the panel which was announced in 1973 was only for 15 vacancies and the practice of giving adhoc promotions to fill up few vacancies after the panel had exhausted to persons who had qualified in the earlier examination and not to seniormost available persons, which was followed as a convention, being not correct, was changed subsequently and therefore the applicants have no case. He further contended that the prayer made in the Writ Petition No.168/81 was only for quashing of the order of reversion and restraining the defendents from reverting the applicant and the observations which were made in the context of the challenge to the request could not be considered as a part of the final judgment. These observations were only made by the Bombay High Court Nagpur Bench while discussing the question of formation of "shadow" panel and promotion of persons from such panels. He further contended that since the notification was only for 15 vacancies enlarging a panel now would directly debar certain other persons who could have competed in the selection had the panel

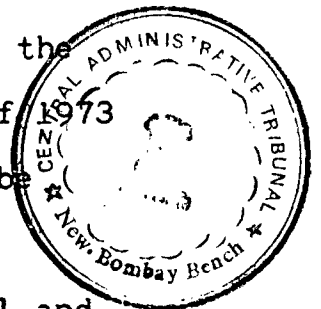


being formed for 20 or 21 vacancies as being ~~prayed~~ by the applicants, and this would not ~~have been~~ correct. The contentions of the applicants was that since they were put to work on adhoc basis on the strength of the shadow panel the panel should be considered as having be already upto that number and should be considered for regularisation.

The main question that requires to be decided in this petition is whether by virtue of having been promoted ^{or on adhoc arrangements} ignoring their seniors, on the basis, of their having qualified and finding their name in the merit ^{or of 1973 Exam} list, the applicants have generated a claim for themselves for being considered to have been promoted at par with empanelled candidates ^{or of that selection}. It has not been denied that there was a practice to promote on adhoc basis persons who could not find a place in a panel but who had otherwise qualified in the selection. Such a practice, though against the normal rules, which lay down that if adhoc promotions are to be made seniormost suitable person should be considered till selected hands are available, was perhaps adopted in the background that the administration felt more confident in promoting on adhoc ^{or basis} those persons who had been able to qualify in a selection in comparison to those who failed to qualify irrespective of the fact that such persons who had qualified were actually not panelled and who in normal course have no claim for regular promotion. We find that in the submission made before us in the written statement by the respondent as well as in the submissions made before the Nagpur Bench the fact that actually a panel of 15 persons was finally declared had not been highlighted. An impression therefore got created that the list of 30 candidates which is placed at page 5 of the written statement by the respondent was the panel.



This has been explained in para 11 by saying that in certain terminology the practice to fill up the post by employees who could not be empanelled for vacancies following in subsequent period and before the conduct of further examination such persons were called as being on shadow panel. Since this practice was creating dissatisfaction among the senior staff who though they failed in a particular examination would become eligible again for adhoc promotion after a ascertain period, which was normally 6 months, were ignored by the administration while making this adhoc promotions and giving them to those persons who had qualified in the eralier examination and were supposed to be on the shadow panel. This practice had to be given up and the seniormost persons are only considered for adhoc promotions pending arrival of duly selected persons. There is no doubt that the applicants had qualified in the said selection of 1973 but when a panel has to be declared it has to be in accordance with the requirements and only the seniormost 15 persons had to be kept on the panel and were kept on the panel. These persons were promoted during the next two years or so and when the panel got exhausted some more adhoc promotions had to be made in which the applicants names were put up to the authorities. A fresh selection, as we have already noted, were held in the year 1976. The pre 1973 rules had already been amended. The provision under which Engineering Graduates who had completed certain period of service were permitted to appear over and above 6 X number had been withdrawn. Not all the applicants could therefore appear in the 1976 selection and those who could appear did not qualify and therefore they were ^{by ordered to be} reverted but they were re-promoted in 1979 and regularised in 1980 after having been empanelled in subsequent selection.

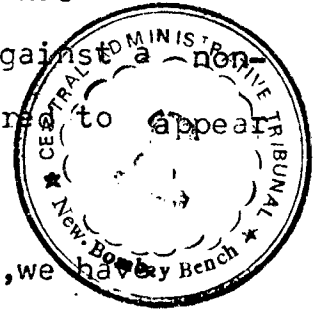


We have already referred to the judgment of the Bombay High Court in R.A.Dubey's case. Had the position in regard to the publication of the panel of 15 being brought to the notice of the Hon'ble High Court perhaps the remarks that they had given in respect of merit list would have been differently worded. It is difficult to say how the case would have got decided under that circumstance. R.A.Dubey was considered to have qualified in the examination by virtue of his position in the merit list of 1973 examination. He was junior to all the applicants except C.L. Gupta. Gupta's case is that even though R.A.Dubey failed in the 1980 examination the Bombay High Court judgment gave him advantage over his seniors who were not similarly treated by the administration though they had been representing against the same after the Special Leave Petition had been dismissed by the Hon'ble Supreme Court and he deserved to be similarly considered because he had passed. As we have observed earlier Dubey's case was for seeking relief against his reversion which was granted to him but the observations made by the Bombay High Court resulted in the administration taking further action of including him in the panel of 1973 at Sr.No.16.



Whenever posts in the Class II services are filled up through promotion from Class III a realistic assessment of the vacancy is made. It has to be seen that there are no wide variations between the assessment and the actual vacancies plus those expected to materialise during the currency of the panel. Therefore the vacancies are calculated on the basis of those arising in the next 2 years due to retirement etc. plus new posts or additional posts for which proposals have already been submitted giving allowance for a reduction by those who return from deputation/foreign service etc. plus certain percentage based on the average number of officers sent on training

during the preceding 2 years. ^{3/ cf} All these vacancies normally 75% are filled through selection according to seniority and 25% by the LDCE. When sometimes it has not possible to hold the selection once in two years, vacancies are required to be assessed separately and employees within the field of consideration and eligible for the selection have to be considered and a separate panel has to be drawn ^{3/ for each grouping}. The qualifying candidates are listed in groups as outstanding (those getting 80% and above) very good (those getting between 70% to 79%) and good (between 60 to 69%). The panel to the required length as the vacancies advertised ^{3/ Show} is published. Since the selections are held once in two years the life of the panel will also be two years or till they are exhausted whichever is earlier. The panel once approved is not normally cancelled or amended. If at any time it is considered necessary to cancel or amend the panel due to procedural irregularities or other defects this is done by obtaining the approval of an authority higher than that who has approved the panel. Normally an employee who has been placed on the panel and who once officiated ^{3/} against a non-fortuitous vacancy in his turn is not required to appear ^{3/ a} again for fresh selection.

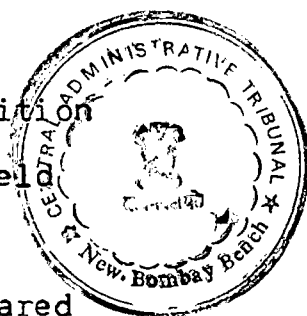


In respect of adhoc promotions as, we have already observed, whenever there is a vacancy the normal rules state/demand that only the seniormost eligible person as per his turn should be promoted. There may however, be reasons when it may become necessary to resort to the promotion of the junior employee but such situations will arise only when a senior employee is not at the place where the vacancy has taken place and can't become available immediately or the vacancy is for a very short period or the senior employee may not like to move on transfer to have the adhoc promotion or when the selection panel is not available. Though there are periods for which such promotions ^{3/ are} be made and after which they lapse ^{3/} but yet

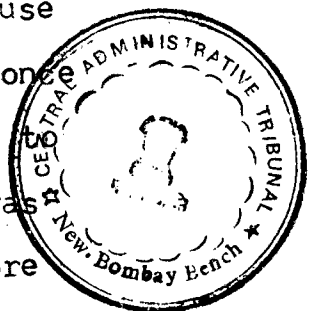
sometimes due to administrative reasons such employees are continued beyond this period but for their continuous the competent authority must permit the arrangement.

Such being the position of rules in regard to formation of panels and adhoc promotions the 1973 selection was only legitimately meant to cover 15 vacancies, and the 4 applicants whose cases are under consideration were not part of the 15 and therefore they had no right to be considered even for adhoc promotions which were given to them by the respondents on account ^{by the seemingly} of erroneous policy which they had followed of picking up persons who had been able to qualify but who did not find a place in the panel of previous selection.

In para 7 of their judgment in the Writ Petition No.168/81 it has been said that the written test was held in 1973 to draw a panel of 15 candidates and in the Annexure 'B' the name of the petitioner (R.A. Dubey) appeared in the shadow panel which had been prepared by the selection committee and has ^{been discussed by us} ~~quoted~~ in the previous paras. In para 8 of their judgment the Nagpur Bench made an observation that the shadow panel was prepared by the same process of the selection and further appointments were made from this panel. It was on this interpretation that they did not accept the submission made by the respondents that the petitioner did not have the eligibility necessary for enabling him to obtain the promotional post. During any selection the number of candidates who can be classified in the qualifying category need not necessarily be only to the extent the panel is to be formed. The number is always much more but the fact that they have qualified, though their names did not appear in the panel, does not give the candidates any right to ask for exemption from

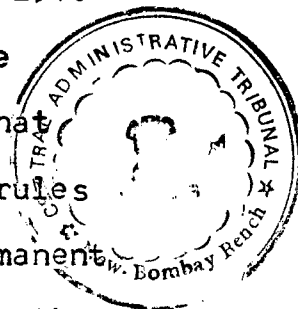


a subsequent selection that is held in following years on the ground that since they have once qualified they need not appear in the test again. If that was so a situation will be created where the vacancies arising in subsequent years would have to be filled by those who have once qualified in the previous examination and were put on the merit list on the so called shadow panel and fresh candidates will be denied the opportunity to compete for the vacancies. This will be against the spirit of our constitution where equality in employment is guaranteed. We therefore do not agree with the view that anyone whose name appears in a merit list or the so called shadow panel has any claim to consider himself as eligible for being considered for regular promotion in preference to others who are waiting their turn for appearing in the next selection. The fact that a person qualified for promotion because he passed the examination is not any more material once a panel has been declared and the panel was limited to 15 and it was gazetted by the respondents. There was no defect in the formation of the panel and therefore it become final. The panel was operated and all the 15 persons got promoted during the currency of the panel. Those who were on the merit list had no right to be considered for regular promotion. In this context we will like to reiterate that the discussion in the judgment of the Bombay High Court which quashed the order of the reversion cannot give any right or benefit to the present applicants and the judgment was only limited to the quashing of the order of the reversion and permitted continuance of the petitioner in that case on adhoc basis inspite of the fact that he failed in the 1980 Examination.



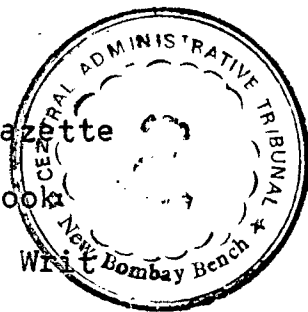
After 1973 the next selection was held in 1976.

The question was raised at the Bar that this 1976 examination was neither held under the old rules where the Engineering Graduates were eligible for appearing in the selection nor in accordance with the amended rules where separate selection has to be held for 75% of the vacancies and 25% of the vacancies. Only one selection was held and some of the applicants were denied the chance to appear in the selection because they did not become eligible on the basis of the criteria laid down by the amended rules. The learned counsel for the respondents was not able to explain why the 1976 selection was not held in accordance with the revised amended rules. However, on going through the papers available in the Respondents File No.HPB/661/R Engineering Class II Policy, it is observed that Railway Board vide their D.O.letter No.E(GP)/70/2/6/PT of 21-1-1976 scrapped the scheme of limited departmental competitive examination. It seems that it was in this background that the selection held in 1976 was not held under the old rules or the new rules but was held by allowing only the permanent staff in certain category to appear in the selection on the basis of 6X formula. The background of this decision of scrapping the scheme of LDCE was perhaps the introduction of revised scales of pay and the determination of the eligibility consequent to this revisions. There is also an indication that UPSC's approval to the new rules was awaited. It was in 1978 that the Railway Board issued final instructions vide their letter No.EGP/74/2/20 dt. 31-8-1978 withdrawing the ban placed on holding the selection in accordance with the revised amended rules and permitted holding of the selections and limited examinations on the Railways. It, therefore, can't be said that in the 1976 selections in which only permanent staff were considered and the scheme of permitting Engineering Graduates



being called for selection beyond the 6X number was not applied, in any way discriminated against the applicants. This was a policy which was followed by all Railways and therefore the plea raised that this meant denial of the opportunity to the applicants only in 1976 cannot be accepted. One of them was promoted in 1976 while two of them could only get a chance against the 75% quota in 1979 and the fourth against the 25% quota in 1980. In the 1976 examination except for one applicant the other three were not considered eligible.

The extract from Central Railway monthly Gazette No.9 of 1-9-1985 placed at Sr.31 of the paper book mentions that consequent upon the judgment in the Writ Petition by the High Court of Bombay, R.A.Dubey has been placed at Sr.16 of the panel of AENs(Class II) published in the Railway Gazette No.544 dated 1-9-1975. It is doubtful whether this action taken by the respondents was in the ratio of the judgment delivered by the Bombay High Court, Nagpur Bench. In any case we are now told that Shri R.A.Dubey has unfortunately expired on 26th July, 1985 and therefore we consider that this matter could be given quietus since the person who was given the seniority by the respondents has unfortunately got removed from the scene of action by his unfortunate death. We have already considered the request of the applicant that since the shadow panel was operated upto a certain number reliefs should be given upto that number to them also as in the case of R.A.Dubey and find no force in it. The only relief that could have been given to R.A.Dubey was his non reversion and we are told that the applicants have also not been reverted. The representations made by the applicant in 1985 & 1986 before they came to this Tribunal by their applications



were not based on the correct appreciation of the rules but they were based on the desire to obtain reliefs which was given to R.A.Dubey by the action taken by the respondents in revising the panel made in 1973. We do not consider that ^{31/ they have} ~~they have~~ any case for such a consideration. The prayer for incorporation of his name in the 1973 panel and consequent promotion and other benefits is therefore rejected. The petition accordingly stands dismissed.

These orders will also be applicable to the [✓] which also stands dismissed. [✓] other three petitions, Parties will bear their own cost.



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