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

Stamp Application No.557/89.

Shri Zaffar Ullah Khan & 22 others ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.C.Nathan, advocate for the applicant,
Mr.J.G.Sawant, advocate for the respondents, and
Mr.G.S.Walia, for the Petitioners in M.P.683/89.

Oral Judgment:

Dated: 22.9.1989

{Per Shri M.B.Mujumdar, Member(J)}

By order dated 21.8.1989 notice regarding admission to the respondents was issued and ad-interim order in terms of prayer 9(a) (bracketed portion marked 'A') was passed. In other words, the respondents were restrained from taking any action with a view to cancel and/or revoke the notification dated 16.2.1989 till admission.

2. Just now we have heard Mr.Nathan for the applicants, Mr.J.G.Sawant for the respondents and Mr.G.S.Walia for the petitioners in Misc. Petition No.683/89. Misc. Petition No.683/89 is given by Shri D.D.Dudhwadekar and Shri S.P.Mishra, mainly for impleading them as respondents, in this application.

3. In pursuance of the notification dated 11.4.1988. a written test was held on 10.9.1988 and 17.12.1988. The test was held for filling up 23 posts of apprentice mechanics, 221 candidates appeared for the test and out of them 42 including the present 23 applicants and two petitioners in Misc. Petition No.683/89 were qualified. A viva voce was held on 24.1.1989 and 28.1.1989. In result thereof, the notification dated 16.2.1989 was issued declaring that all the 23 applicants were suitable for Intermediate Apprentice Mechanics. Thereafter, the applicants underwent three months training in the

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Basic Training Centre at Matunga and thereafter they were sent to the System Training School at Jhansi. There they underwent training for 3 months more. The training was in all to be of two years.

4. The petitioners in Misc. Petition No.683/89 i.e. Shri Dudhwadekar and Shri Mishra have filed Original Application No.275/89 challenging the selection and the consequent panel dated 16.2.1989. On 18.8.1989 when the application came up before one of us, Mr.Sawant, learned counsel for the respondents stated that the competent authority had already taken a decision to scrap the impugned panel of 16.2.1989. Hence the applicant's advocate withdrew that application and it was accordingly disposed of as withdrawn with no order as to costs.

5. It is by the order dt. 19.8.1989 that the impugned panel of 16.2.1989 was scrapped. That order says that the panel was cancelled on account of some administrative reasons. Thereafter on 21.8.1989 the 23 applicants have filed this application for restraining the respondents from initiating any action of scrapping and/or cancelling the notification dated 16.2.1989.

6. The respondents have filed the detailed reply of Shri B.Raikwar, Deputy Chief Mechanical Engineer, Central Railway, Chief Workshop Manager's office, Matunga. In para 5 of the reply, some of the irregularities in the process of selection noted during the investigation by the Vigilance Branch are pointed out. We have seen the relevant records and we are prima facie satisfied that the cancellation of the panel dated 16.2.1989 was justified. We will refer here to one glaring irregularity. A statement was made before us by Mr.J.G.Sawant, learned counsel for the respondents that twice grace marks were given to the candidates. Moreover, that was done before appointment of the Selection Board.

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7. In this connection we may refer to a letter dated 30.3.1985 which is at Ex.4 to the reply of the respondents. Subject of that letter is selection procedure for filling up non-gazetted selection post - moderation by way of awarding grace marks. In para 2 of the letter it is stated that the railway administration are aware in terms of para 1(3) of the Ministry's letter dt. 25.2.1971 that moderation by way of awarding grace marks to candidates shall not be resorted to without the authority of the selection board. In para 2.1 it is mentioned that the matter was discussed in the conference of Chief Vigilance Officers of the Indian Railways, etc. in the Board's office. Consensus which emerged at the conference was that (a) awarding grace marks should be stopped and (b) no moderation should be allowed except with the authority of the Selection Board or the authority competent to accept the recommendation of the Selection Board. In para 2.2, it is stated that while extant instructions do not provide for awarding grace marks in individual case, insofar as moderation of results is concerned, instructions contained in Ministry's letter dt. 25.2.1971 will continue to apply. In para 3, the Ministry of Railways reiterated that while moderation of results should be strictly in accordance with para 1(iii) of letter dt. 25.2.1971, no grace marks should be awarded in individual case. In other words, the decision was that the instructions in the letter in para 1(iii) of the letter dt. 25.2.1971 should be followed.

8. A copy of the Railway Board's letter dt.25.2.1971 is produced at Ex.'3' to the reply of the respondents. In para 1(i) of the letter it is stated that responsibilities for selection will be collective on all the Members of the Selection Board. Clause (ii) of the para is not

relevant in this case. But clause (iii) of that para is material and it is as follows: "Moderation by way of awarding grace marks to Candidates shall not be resorted to without the authority of the Selection Board".

9. This instruction clearly shows that the awarding of grace marks by moderation in this case by some other authority before the appointment of Selection Board was prima facie not proper. Mr. Nathan relied on Clause 'b' of para 2.1 of the letter dt. 30.3.1985 which we have referred to earlier which says that no moderation should be allowed except with the authority of full Selection Board or with the authority competent to accept the recommendations of the Selection Board ~~or with the authority competent to accept the recommendations of the Selection Board.~~ According to Mr. Nathan the authority competent to accept recommendation of the Selection Board had awarded grace marks in the case and that is consistent with para 2.1. But as already pointed out, para 2.1 merely mentions the consensus which emerged in the conference of the Chief Vigilance Officers. As pointed out in para 2.2 and para 3 the Railway Board the Ministry of Railways had reiterated that the moderation results should be strictly in accordance with para 1(iii) of the letter dt. 25.2.1971. In our opinion, no further comments are needed to show that the awarding of grace marks/moderation which was done in this case before the appointment of the Selection Board was contrary to the instructions in the letter dated 25.2.1971.

10. Mr. Nathan submitted that due to award of grace marks/moderation no prejudice was caused to the respondents or others. We are not inclined to agree

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with this argument.

11. The impugned panel of 16.2.1989 is cancelled by order dated 19.8.1989 and this application is filed two days thereafter i.e. on 21.8.1989. We find that that order dt. 19.8.1989 is fully legal and proper and in accordance with the relevant instructions.

12. In result we reject this application summarily and vacate the interim order passed on 21.8.1989. Consequently, we also reject Misc. Petition No.683/89.

13. At this stage Mr.Nathan requested to continue the stay for two weeks more. But in view of the facts stated above the request is rejected.



(M.Y.PRIOLKAR)
MEMBER(A)



(M.B.MUJUMDAR)
MEMBER(J)