

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

QxRxNx St. No. 352/89 198
TxRxNx

DATE OF DECISION 27.7.1989

Shri S.D.Raut and others.

Petitioners

Shri G.S.Walia

Advocate for the Petitioner(s)

Versus

Union of India and others.

Respondents

Advocate for the Respondent(s)

CORAM :

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

P.S.

The Hon'ble Mr. P.S.Chaudhuri, 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?
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?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

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Stamp No. 352/89

1. Shri S.D.Raut
2. Shri B.G.Servankar
3. Shri S.S.Sail
4. Shri R.R.Raut

C/o. G.S.Walia,
Advocate High Court,
89/10, Western Railway
Employees' Colony,
Matunga Road, Bombay.

... Applicants

V/s.

1. Union of India through
General Manager, Central
Railway, Bombay V.T.

2. Senior Divisional
Personnel Officer,
Bombay Division,
Bombay V.T.

... Respondents

CORAM: Hon'ble Vice Chairman Shri P.S.Shah
Hon'ble Member (A) Shri M.Y.Priolkar

ORAL JUDGMENT

Dated: 27.7.1989

(PER: P.S.Shah, Vice Chairman)

We have heard Mr.Walia appearing for the applicants.

We have also heard Mr.David John, Assistant Personnel Officer,
Divisional Railway Manager's Office, Bombay.

2. Having heard Mr. Walia at length, we are of the view that there is no merit in the claim of the applicants and the application deserves to be dismissed in limini. We record briefly our reasons for the view we have taken : The admitted facts are that Chargeman 'B'/TSRT Gr.Rs. 1400-2300 (RPS) under Senior Divisional Electrical Engineer(Traction Rolling Stock), Kurla is a selection post. 37 vacancies in the selection grade were assessed and selection for filling up of these 37 vacancies was processed. As per the rules the employees to be brought

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under consideration according to seniority is 3 times of the vacancies. Accordingly, 105 employees were brought under consideration as 6 SC employees were considered against general quota as per their seniority and also against SC quota. Only 3 ST candidates as against 9 vacancies were available. These employees were subjected to written test on 23.7.1988 and supplementary test on 25.8.1988. Out of these employees, only 21 employees as against the assessed vacancies of 37 had qualified in the written test. As a result, only these employees were called for viva-voce interview which was held on 4.10.1988. All these 21 employees were empanelled for promotion to the said posts. The panel was approved by the Competent Authority on 10.10.1988. On 13.10.1988 the posting orders of all these 21 employees in the promotional posts were issued. Thus, 16 vacancies still remained to be filled.

3. In order to fill in these 16 posts, 48 employees excluding those who did not qualify or appear in the earlier selection/written test were called for written test on 7.1.1989. Out of them only 43 employees appeared for written test which was held on 7.1.1989. Only 12 employees including the applicants qualified and were interviewed on 18.1.1989. After the interviews, the selection board put up the proceedings before the competent authority for approval on 18.1.1989. The Competent Authority, however, did not approve the selection. The main reasons for not approving the selection were (i) the selection was treated as a 'continuation' process of the earlier selection (ii) As a result of this assumed 'continuation', those who had failed in the written test in the first selection and those who did not appear for the written test in the first selection were excluded from constitution. It is obvious that once a panel is prepared the selection process comes to an end. In the present case 105 employees were brought under consideration for the selection of 37 posts and

and ultimately 21 were selected and empanelled. After this empanelment there is no question of continuation of the selection process in original application as it seems to have assumed in this case. This assumption has led to a clear irregularity causing injustice to the employees who had not appeared for written test in the first selection or who had failed in the written test. All these employees could not be excluded from being brought into consideration when the selection for the remaining 16 posts was contemplated. Admittedly, the 48 employees who were brought under consideration for the selection of the 16 posts are junior to the employees who had failed or who did not appear for the selection in the first test. If the selection was to be made for the 16 posts, the zone of consideration would be 48 employees. These 48 employees who could be brought into consideration must be according to seniority irrespective of the fact whether they had failed in the written test at the time of first selection or even did not care for the written test. The relevant date is the date when the selection of 16 persons is thought of, i.e some time in the month of January 1989. These employees who are admittedly senior to the 48 employees who were brought under consideration for the 16 posts, could not be deprived of their rights to be considered for these posts. They had a right to appear for the written test and also had the right to be interviewed if they passed the written test.

4. The second ground on which the selection of the 16 persons was not approved is that according to the procedure there should be a gap of at least six months between the earlier selection and the contemplated selection. It appears that the gap of 6 months is intended to give sufficient time to the employees who had failed in the earlier selection to prepare for the written test and interview in the subsequent selection. In our opinion this is a sensible approach because

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if the fresh selection is to be held immediately after the first selection then the failed employees might repeat their earlier performance in the examination which would result in their losing a valuable right to be considered for the fresh selection. In any event, the seniormost employees must be brought within the zone of consideration, irrespective of the fact whether they had failed in the previous selection test or did not appear for the test. Admittedly the 48 employees ^{were} called for the selection ^{were} junior to other employees who were entitled to be brought within the zone of consideration. The selection of the 16 employees in question has, therefore, been rightly cancelled. ^{"Having in view in the case, we find that the second selection has been rightly cancelled."}

5. Mr. Walia has raised before us some technical points. He submitted that ADRM who had initiated the selection was not competent to cancel the selection, having regard to para 2 of the Indian Railway Establishment Manual. In our opinion reliance on 213 (c) by the learned advocate in the facts of ^{misplaced.} this case is ~~dismissed~~. Sub-clause (c) of paragraph 213 provides that promotion to selection posts shall be made by the competent authority in accordance with the recommendations of a selection board in the manner detailed in paragraph 216 of the manual. It further provides that if, in any case, such authority is unable to accept the recommendation, a reference shall be made to the General Manager, who may, if necessary, constitute a fresh selection board at a higher level and whose decision in the matter shall be final. This rule obviously is not applicable in this matter. Here the procedure of selection is found to be illegal from its inception, because persons who are entitled to be brought under the zone of consideration are totally ignored and junior employees are considered. The time limit of keeping a gap of six months in the earlier selection and the next selection is also ignored. Since the selection process itself is bad, the question of forwarding the recommendations to the General Manager as

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contemplated by paragraph 213 (c) of the Manual does not at all arise. The Rule relied by Mr. Walia is not at all correct. In the circumstances, the selection of the 12 employees in question was rightly cancelled as arbitrary, illegal, improper and unjust.

6. In the result, we find that there is no merit in this petition and stands rejected summarily.

M.Y.Priolkar
(M.Y.Priolkar)
Member (A)

P.S.Shah
(P.S. Shah)
Vice Chairman