BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NOS. 431 to 445/96, 525/96, 526/96, 794/96 and 800/96.

Friday this the 9th day of July, 1999.

CORAM: Hon'ble Shri Justice S.Venkataraman, Vice Chairman
Hon'ble Shri S.K.Ghosal, Member (A)

1. Krishna Pratap Tiwari
2. Asheesh Kumar Goel
3. Rajkumar Raghuwanshi
4. Anil Kumar Shakya
5. Keshav Bhargava
6. Sunil Kumar
7. O.S.Dhakad
8. V.K.Gupta
9. R.K.Sharma
10. Sunil Kumar Dixit
11. N.S.Yadav
12. C.P.Mishra
13. P.K.Mishra
14. Ashok Kumar
15. A.K.Nayak
16. P.P.Raut
17. K.Mahapatra
18. Shankar Jee
19. A.C.Sharma

All are working as Assistant Station Master, Central Railway, Solapur Division. ... Applicants

By Advocate Shri G.K.Masand along with Shri R.D.Deharia

V/s.

.. 2/-

1. Union of India through
The General Manager,
Central Railway,
Mumbai C.S.T.,
Mumbai.

2. The Chief Personnel Officer
Head Quarters Office,
Central Railway,
Mumbai C.S.T.,
Mumbai.

3. The Chairman,
Railway Recruitment Board,
D-15, Machha Colony,
Shivaji Nagar,
(Near Bust Stop No. 6),
Bhopal.

4. The Divisional Railway
Manager,
Divisional Office,
Central Railway,
Solapur.

5. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta. ... Respondents

By Advocate Shri S.C.Dhawan

.. 3/-

ORDER (ORAL)

PER.: SHRI JUSTICE S. VENKATARAMAN,
VICE-CHAIRMAN.

In all these applications the applicants are aggrieved that though they were selected in the panel of 1991 for appointment to the post of Assistant Station Masters, the respondents have discriminated against them and have given appointments to candidates who were selected and included in the subsequent panel of 1992. The facts giving rise to these applications briefly are as under :

The Railway Recruitment Board, Bhopal, issued a notification dated 22.10.1990 Annexure A-II calling for applications for the post of Assistant Station Masters in Jansi, Bhopal and Jabalpur Divisions of Central Railway and Nagpur and Bilaspur Divisions of South-Eastern Railway. All the applicants submitted their applications and they had succeeded in the written test and viva-voce. Their names were included in the panel of 1991. The panel was sent to the competent authority in November, 1991. In the notification at Annexure A-II, the number of posts was shown approximately as 787. The applicants were directed to undergo training at Zonal Training Centre at Bhusawal from 18.01.1995 to 19.04.1995. After completion of the training, the applicants were all posted as Assistant Station Masters in Solapur Division by order dated 05.07.1995.

2. The case of the applicants is that, though they had been selected for the posts in the Division notified, they had been posted to a different Division, that they accepted the postings under protest and also followed it up with representations dated 02.10.1995 and that they have come to know that though they had been selected for the posts notified in those five Divisions ~~but~~ they had been posted to a different Division ~~and that~~ the candidates whose names were included in the subsequent panel of 1992 have been posted to Northern Railway and Bhopal Division of Central Railway and that they have all been working from 1992 itself. They have further pleaded that the respondents have posted many candidates in Bhopal, Jansi, Jabalpur, Bhusawal, Bombay and Solapur Division ignoring the applicants' claims. By these applications the applicants have sought for the following reliefs.

"i) Hold and Declare that the applicants' right to re-post as A.S.M. on Bhopal, Jhansi, Jabalpur Division of C. Rly & Bilaspur & Nagpur Division of South Eastern Rly., must be upheld.

ii) Issue a writ, order or direction in the nature of mandamous directing the respondents to issue reposting order of the applicants for the post of A.S.M. to the respective area, for which the respective notification was issued & their willingness was given according to his panel position, in any case prior to the date of posting of the candidates of the subsequent panel.

iii) The applicants may be granted, on such posting the inter-se-seniority.

iv) The applicants may be granted pay and other allowances from the date of such posting, with all consequential benefits such as promotion, etc."

3. The sum and substance of the defence taken by the respondents is that the number of posts shown in the notification is only approximate, that generally as many candidates may not join the post or they may fail in the medical test, approximate figures are given in the notification, that actually 787 posts were not available on the date of notification, that the Recruitment Board sent a panel containing 877 names, that among them only 610 candidates could be accomodated against the vacancies in the five Divisions specified in the notification, that though the validity of the panel expired in November, 1992 and though there was no obligation on their part to issue any appointments to others who were left out in the panel, still the respondents got the life of the panel extended till end of 1994 and that after obtaining the approval of the Board, the applicants were all posted to Solapur Division. They have asserted that no one else has been appointed from 1992 panel in any vacancy in the five Divisions included in Annexure A-2 notification and prior to the appointment of the applicants in Solapur Division. They have further pleaded that there were large number of vacancies available in the Northern and South-Eastern Railways and the respective General Managers had requested for making available the candidates selected by the Railway Recruitment Board within the area of Central Railway for giving them appointments on the said

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Railways, that with the prior approval of the Railway Board the candidates whose names were included in the 1992 panel were made available to the Northern and South Eastern Railways for giving them appointments in the said Railways. They have also contended that the applicants having accepting the postings given to them without any protest were debarred from now raising the plea which they have raised.

4. The applicants have filed a rejoinder, though without obtaining prior permission of the Tribunal. However, we have now allowed the Learned Counsel for the applicants to refer to that rejoinder also during arguments.

5. There should be no dispute about the legal proposition that mere empanellment or inclusion of one's name in the selection list does not confer on a candidate any right to be appointed (Government of Orissa V/s. Hariprasad Das - 1998 (1) SCC 487). The Learned Counsel for the applicants also concedes this position. His main contention is that when the panel of 1991 which included the names of the applicants was in force, the respondents could not have issued appointments to those whose names were included in the latter panel of 1992. He also drew our attention to para 306 of I.R.E.M. in this regard. Even the Learned Counsel for the respondents does not dispute this position. The contention of the Learned Counsel for the applicants

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was that the respondents by issuing appointment orders to the candidates in the panel of 1992 have discriminated against the applicants who ought to have been issued the same appointments. He also urged during the course of his argument that when the respondents themselves had notified 787 vacancies and when admittedly the Recruitment Board prepared another panel containing 418 names in 1992 for the same three Divisions of Central Railway, the respondents cannot contend that there were no vacancies at all in those three Divisions and that as such, the plea of the respondents in this regard will have to be ignored.

6. The Learned Counsel for the respondents contended that merely because a particular figure is shown in the notification or another panel had been prepared by the Recruitment Board, it cannot be said that the categoric assertion made by a responsible officer in the reply that only 610 candidates could be accomodated in those three Divisions and that there were no other vacancies is false. He further submitted that the applicants have not been able to show that any other fresh appointment had been made in those three Divisions after the 1991 panel candidates were appointed.

7. It is seen that in the notification it is indicated that the number of vacancies is approximately 787. It is also indicated that the number may be varied. As such, it would not be appropriate to hold that there must have been actually 787 vacancies at that time. But

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it is not explained as to how when the notification referred to the number of vacancies as 787, the Recruitment Board sent a panel of 877 names. The Learned Counsel for the applicant submits that an additional indent must have been sent by the Railways. That apart, it is not at all explained as to how when there were no vacancies at all to accomodate the candidates whose names had been included in the panel of 1991, the authorities sent another indent to the Railway Recruitment Board for 417 posts in the same three Divisions. In fact, during the arguments when we wanted to know how this has happened, the Learned Counsel for the respondents was not able to give any explanation. In fact, we gave two days time to him to ascertain from the authorities concerned and explain the same. However, today the ~~Le~~arned Counsel for the respondents submitted that he has not been able to get any clarification in this regard. From the facts pleaded by the respondents themselves, we find it difficult to think of any plausible cause for the authorities concerned sending another indent in September, 1991 when already their earlier indent was pending and the selection process had commenced. It is ~~however~~ true proved that the results of selection was published in November, 1991 and the panel was received in the same month. There must be some reason ~~for~~ which the respondents do not want to disclose or cannot disclose. Be that as may, these circumstances may not have much relevance so far as the point under consideration is concerned.

8. The reply filed by the respondents only indicated that the panel of 1991 was kept alive out of humanitarian consideration and that so far as the candidates in the 1992 panel were concerned, they were sent to Northern Railway and South Eastern Railway as there was an indent from thos Railways. The applicants in their rejoinder have pleaded that if they had been given an option, they would have also agreed to go to Northern Railway or South Eastern Railway and that the respondents could not have given preference to candidates in 1992 panel without first offering those posts to the applicants.

9. During the arguments we questioned the respondents' counsel to explain why the applicants were not considered for being sent to the Northern Railway and South-Eastern Railway before the candidates of 1992 panel were given those posts. At that stage, the Learned Counsel for the respondents submitted that the panel of 1991 had lost its validity by November, 1992, that when the request from the Northern Railway and South-Eastern Railway came, the panel of 1992 was still in force and as such with the approval of the Railway Board those candidates were sent to those Railways and that the proposal was made only subsequently to revive the 1991 panel and extend its life and it was under those circumstances the applicants would not have been considered when the 1992 panel candidates were sent to South-Eastern Railway and Northern Railway. Unfortunately, the respondents had not spelt out this position clearly in their reply. We therefore wanted the relevant records

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to be produced before us. The records have been produced by the Learned Counsel for the respondents. On perusal of the records we find that on 07.09.1993 a proposal was put up for extension of the currency of the panel of prob-ationary A.S.M.s. received from the Recruitment Board on 09.11.1991 till it gets exhausted. In that proposal it is stated that after the receipt of the 1991 panel, the Recruitment Board has supplied one more panel of 418 applications on 08.07.1992, that as the earlier panel was not fully utilised, those applications were sent to Northern Railways and South-Eastern Railways for their use as they had urgent need, that in near future some vacancies would arise in all the divisions due to various factors and therefore need would arise to utilise the left over applications and that no new indent had been placed on the Railway Recruitment Board and that as the validity of the panel expired on 07.11.1992, the currency of the panel will have to be extended with the approval of the competent authority i.e. the General Manager. We also find that the C.P.O. has endorsed that due to retirement, etc. during the next six months there would be requirement and that persons who could not be offered job from earlier panel are therefore required to be offered jobs. He has put up the proposal before the General Manager. After noting that one year extension would expire on 08.11.1993, a recommendation was put up that the panel may be extended upto 08.11.1994. The General Manager has accorded his sanction on 19.10.1993. In view of these ~~proceedings~~ noting in the record,

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we do not find any reason to doubt ~~and make it clear~~ that the panel of 1991 had expired by November, 1992 and that it was got revived only in October, 1993. By that date, the candidates whose names were included in the 1992 panel and who also could not be accomodated in the 3 Divisions for which the notification had been issued, were diverted to Northern and South-Eastern Railways. The panel of 1991 had still not been revived and as such, these applicants could not have been considered at that stage.

10. The Learned Counsel for the applicants contended that when the panel of 1991 had not been exhausted and when the request from the two other Railways came, the respondents ought to have sent a proposal for reviving the 1991 panel and that instead of that, ~~they have~~ waited for the 1992 panel to be exhausted and thereafter ~~only~~ in the month of September they have put up the proposal for revival of the 1991 panel. According to him, this action of the respondents is arbitrary. We are unable to agree with this submission. The panel had lost its life by November, 1992 and the respondents were under no legal obligation to revive that panel.but when the request from other regions, namely - Northern Railway and South Eastern Railway came, it was then decided to send the candidates whose names had been recommended by the Recruitment Board of Bhopal. The panel of 1992 was in force then, and there is nothing wrong in the authorities operating that panel. It is only when they found that some more vacancies would

arise and no other indent had been sent to the Recruitment Board, they have thought of reviving the 1991 panel and then put up the proposal. As such, we cannot hold that the action of the respondents in putting up the proposal in 1993 is deliberate or arbitrary. That apart, we must point out that the applicants have not alleged any malafides against the respondents.

11. Though the applicants in their rejoinder stated that they should have been given an option to go to Northern Railway and South Eastern Railway, which plea would not be relevant in view of the facts stated above, we may still point out that the prayer of the applicants in the application is not that they should be posted to Northern Railway or South Eastern Railway, as had been done in the case of 1992 panel. Even after knowing that the 1992 panel candidates had been sent to those two Railways, the applicants' prayer is that they should be reposted to the three Divisions notified in the notification. As such, the question as to whether the applicants should have been given the option or not does not arise

12. The Learned Counsel for the applicant submitted that even according to the respondents, 610 candidates of 1991 panel were accomodated in the three Divisions and that the applicants had secured two ranks which are higher than Sl. Nos. 610 and as such, the applicants were entitled to have been appointed then itself and that the respondents have failed to give them appointment. He drew our attention

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to Roll Nos. given to the applicants in the intimations sent to them and after referring to the results which were announced in the order of merit, he sought to point out that the ~~rank numbers of the~~ applicants has secured ranks within 610. The Learned Counsel for the respondents took objection to this and contended that the applicants not having taken such a plea, they cannot now be allowed to put forth a new case and that if the applicants' grievance is that the candidates who had scored ranks lower than their ranks had been appointed, then they should have challenged those appointments and filed applications within one year thereafter and that now they cannot raise the plea. The argument now advanced by the Learned Counsel for the applicants cannot be entertained by us for more than one reason. First of all, the applicants have never put up such a case either in the application or in the rejoinder, even if it could be said that such a case could have been raised for the first time in the rejoinder. Secondly, the argument of the Learned Counsel for the applicant pre-supposes that all the 610 appointments have been made only in accordance with the ranking given in the result sheet. It is seen that many posts are reserved for SC/ST and Ex-servicemen candidates. We do not know how many of them are included in the number 610. As such, it would be too much to assume that because the applicants have secured ranks above Sl. No. 610, they should have found a place in the list of candidates of 610 who were actually appointed.

13. The entire claim of the applicants is based

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on the plea of hostile discrimination. This is the only ground they could have put forth in their claim. We find that from the material on record such a hostile discrimination cannot be held to have been made out.

14. For the above reasons, the applicants fail and these applications are rejected. Parties to bear their own costs.

(D. K. GHOSAL)
MEMBER (A).

(S. VENKATARAMAN)
VICE-CHAIRMAN.

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