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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:19/1999

DATE OF DECISION: 21st Nov, 2002

Shri Gajanand M and others

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Verses

Union of India and others

Respondents.

Shri V.S. Masurkar

Advocate for

CORAM

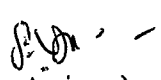
Hon'ble Shri S.L. Jain, Member (J)

Hon'ble Smt. Shanta Shastri, Member (A)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal? xlo

(3) Library. yes.


(S.L. Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 19/99

the 21st day of ' NOVEMBER 2002

CORAM: Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastri, Member (J)

1. Gajanand M.
2. G.H. Pandey
3. P.R. Joshi
4. R.G. Saxena
5. Kanwar Bharadwaj
6. Premnath K
7. Avinash Kadam
8. M.A. Khan
9. Kalim Shaikh
10. S.R. Shukla
11. M.R. Parab
12. V.P. Verma
13. Balkrishna P.
14. R.K. Tiwari.

All are working under the
Divisional Railway Manager,
Mumbai Division,
Western Railway, Mumbai.

...Applicants.

By Advocate Shri G.S. Walia

V/s

1. Union of India through
General Manager
Western Railway,
Head Quarters Office,
Churchgate, Mumbai.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office,
Mumbai Central, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

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O R D E R

{Per S.L. Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 25.8.1998, in alternative, a direction to the respondents to conduct the written test in accordance with the rules and include the names of the applicants in the list dated 25.8.1998 with interview call.

2. After an order dated 30.10.2001 the respondents moved the Writ Petition No.23 of 2000 before the Hon'ble High Court of Judicature at Bombay which was decided vide order dated 23.1.2002, remitted the matter back to the Tribunal to consider the respondents plea relating to clubbing of the vacancies. The liberty is given to both the parties to produce further documents if they desire, thereafter the Tribunal to hear the parties and decide the matter.

3. The applicants by way of an additional affidavit stated that vide order dated 3.2.1994, 31.10.1995 and 7.2.1997 the respondents promoted 55, 14 and 19 employees to the scale of Rs. 1600 - 2660 on adhoc basis (Exhibit G) respectively.

4. The respondents filed M.P. 344/2002 for taking written reply on record. We allow the same in view of liberty granted by the Hon'ble High Court of Judicature of Mumbai.

J.V. /
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5. The respondents replied that vide office order No.E/C/I/23 dated 25.1.1994, the employees who were on panel of CBO/ CLC scale of Rs. 1600 - 2660 (RD) were promoted to the same scale (Exhibit R -3), that vacancies from 31.3.1994 onwards were filled on adhoc basis and selection was processed and finalised on 1.4.1997 and 31.5.2000 respectively. All the vacancies arose till 1997 were taken into account for this selection.

6. The respondents have raised the defence that " no prejudice whatsoever is caused to the applicants since the selection was conducted on conducting the written test and thereafter ^{those} who qualified in the written test, were called for viva ⁱⁿ voce. Therefore the pleas of the applicant with regard to ^{the} bunching of vacancies is not maintainable in law in the peculiar facts and circumstances of this case and therefore OA deserves to be dismissed with costs." The further defence raised is that the applicant is raising all sorts of issues behind the back of the senior employees who were granted adhoc promotion. The applicant is bound to implead them as party respondents in the instant case, failing which the OA deserves to be dismissed on this ground alone. The respondents are relying upon the latest judgement of the Hon'ble Supreme Court in the case of All India SC & ST Employees Association and Another V/s Arthur Jeen and Ors reported in 2000(1) SCSLJ 197 = AIR 2001 SC 1851.. The respondents are also relying upon the judgement of the Hon'ble Supreme Court in the case of A.M.S. Sushanth and other V/s M. Sujatha and others reported in (2000) 10 SCC 197, wherein Apex Court held that the principles of natural justice demand that any

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person who was likely to be adversely affected by the order should have been given opportunity of being heard. It is further alleged that all the candidates who were eligible for selection which was notified and processed in the year 1997. It is also stated that since the case is filed against the selection notified, all the employees who were working on adhoc and were empanelled ~~were~~ continued to work ~~on~~ adhoc basis as CBC/CLC/CGC.

7. The applicants have not arrayed any of the employees who have been selected in the aforesaid selection though being aware of the same and placed Annexure A (OA page 14) order dated 25.8.1998 on record.

8. In view of AIR 2001 SC 1851, All India SC & ST employees Association and Another V/s A. Arthur Jeen and others wherein it is held that:

Non-impleadment of candidate included in panel of provisional selection - Can not be justified on ground that names and particulars of successful candidates were not given or that large number of candidates were there and there was difficulty in service of notices on them Applicant before Tribunal could have taken appropriate steps to serve them by any one of the modes permissible in law ~~with~~ the leave of the Tribunal, or could have impleaded some candidates in representative capacity.

9. In the result OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

Shanta
(Smt. Shanta Shasrty)
Member (A)

S.L. Jain
(S.L. Jain)
Member (J)