

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this 11th the day of June, 2003

Coram: Hon'ble Mr.V.K.Majotra - Member (A)
Hon'ble Mr.Shankar Raju - Member (J)

O.A.50 of 2000

1. P.Thyagarajan & 2 ors.
Junior Engineer II,
Motorshop, Central Railway,
Parel, Mumbai.
2. P.Y.Munkethar,
G.E. II,
Central Railway,
Parel, Mumbai.
3. A.A.Gaikwad,
Master Craftsman,
Central Railway, Parel,
Mumbai.
(By Adv.Shri B.Ranganathan) - Applicants

Versus

1. Union of India
through General Manager,
Central Railway, Mumbai.
2. The General Manager,
Central Railway,
CST, Mumbai.
3. The Chief Workshop Manager,
Central Railway,
Parel, Mumbai.
4. The Chief Personnel Manager (A).
Central Railway,
CST, Mumbai.
5. B.D.Suryawanshi,
Junior Engineer II,
Motorshop, Central Railway,
Parel, Mumbai.
(By Shri V.D.Vadhavkar) - For Respondents 1 - 4

O R D E R

By Hon'ble Mr.Shankar Raju, Member (J) -

Applicants have assailed respondents' order dated 25.4.98, cancelling the earlier selection for the posts of Junior Engineer-II (JE-II) as well as order dated 28.9.98 rejecting the request against cancellation

of earlier selection. He has sought quashment of the aforesaid orders with direction to the respondents to restore the panel of earlier selection.

2. Applicants who were working as ad hoc JEs-II on his representation was assigned correct seniority in the grade of HSK-I w.e.f. 2.5.83 at par with one P.K. Ghaddi.

3. In pursuance of a notification for selection to the post of JE-II applicants participated in the written test conducted on 16.2.98 and were subjected to vive voce test to be held on 2.4.98.

4. No vive voce test was conducted and by a communication dated 25.4.98 earlier notification of selection was cancelled without assinging any reasons. Applicants preferred representations against the cancellation on 22.6.98 which was kept pending and rather a fresh notification was issued for a written test on 11.8.98. Applicants with their objections appeared but could not qualify. They preferred their appeals which were turned down, giving rise to the present OA.

5. Learned counsel for applicants states that vide letter dated 3.3.99 issued by the Chief Personnel Officer (Admn.) CWM PR selection which has been scrapped

has been directed to be revived and this was with the approval of the competent authority and was issued in the name of the General Manager. Subsequently, the Chief Personnel Officer (Admn.) vide his communication dated 18.6.99 ordered for revival of the old panel on the ground that three employees who became senior due to modification of the seniority list though brought into the zone of consideration, they had given their unwillingness to the posts of JE-II in February, 1998 and bringing those employees to the zone of consideration as they stood debarred for a period of one year once the unwillingness is given. As there were no valid ground for cancellation of panel the same was ordered to be revived.

6. In the aforesaid backdrop it is stated that subsequent decision taken by CPO cannot over-ride or supersede the earlier decision taken by the competent authority which is higher than the authority which had revived the panel.

7. Moreover, it is contended by the learned counsel that the action of the respondents is violative of Articles 14 and 16 of the Constitution of India, as General Manager is not subordinate to the Principal Head of the Department.

8. On the other hand, respondents' counsel vehemently opposed the contentions and stated that as in the earlier selection three seniors have not been brought under the zone of consideration, *vive voce* test was not held and selection was cancelled. This has been done on the representation of Secretary, NRRU, a recognized trade union. It is further stated that in the second selection applicants could not qualify and having failed they are not legally entitled to challenge the selection. Moreover, what has been contended, by production of record, is that the decision arrived at by CPO (Admn) of 18.6.99 was superseded by the CPO, a higher authority, vide his notings on order dated 25.10.99.

9. We have carefully considered the rival contentions of the parties and perused the material on record. The ground for cancelling the panel cannot be countenanced in view of the fact that three seniors who had earlier refused promotion are debarred for consideration for a period of one year. It is on this ground with the approval of General Manager CPO has taken a decision to revive the earlier selection through communication dated 3.3.99 and rectified on 18.6.99. The contention put-forth by respondents that subsequently CPO has reviewed the order and superseded it is not tenable in the eye of law as the decision to

revive the decision was taken by the General Manager whereas CPO, a subordinate authority cannot supersede the action. It is also noted that the aforesaid decision taken on 25.10.99 has not been approved by the competent authority. As such cancellation of earlier selection is without jurisdiction and the grounds adduced to cancel the selection are also against the rules.

10. In so far as participation of applicants in second selection is concerned, having taken an objection before appearing in the second selection on 26.2.98 their claim cannot be barred by the doctrine of estoppel or acquiescence as the cancellation is malafide and is violative of the rules. The grounds taken by the respondents have no legs to stand.

11. In the result, for the foregoing reasons, though not disturbing the appointments made in pursuance of second selection, we partly allow this OA by setting aside the impugned order with direction to the respondents to put applicants to a viva voce test on the basis of ~~the~~^{their} earlier qualifying the written examination and in the event they are found fit they shall be considered for appointments as JE-II from the

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due date with all consequential benefits. The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Member (A)