

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 2-7-87

APPLICATION NO 7/85(T) /~~86~~()

W.P. NO 17888/84 /

Applicant
H.V.Krishnaswamy

V/s. The Genl. Manager, S.Railway, & ²ors.

To

1. Shri.H.V.Krishnaswamy,
Chief Clerk, Divisional Personnel Office,
Southern Railways, Bangalore.23.
2. Sri.S.Ranganath Jois,
Advocate, No.36, 'Vagdevi',
Shankarapuram, Bangalore-4.
3. The General Manager,
Southern Railways,
Park Town, Madras-3.
4. The Divisional Railway Manager,
(Personnel) Southern Railways,
Bangalore- 23.
5. The Chief Personnel Officer,
Head Quarters, Personnel
Branch, Southern Railways,
Madras.
6. Sri.A.N.Venugopal, Advocate,
Room No.12, II nd Floor,
S.S.B.Mutt, Building,
Tank Bund Road, B'lore.9.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 18th June, 1987.

Hees
SECTION OFFICER
(JUDICIAL)

Encl : as above

O/c.

Issued

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6/7/87

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 18TH DAY OF JUNE, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 7 OF 1985

H.V. Krishnaswamy,
S/o H.V. Raghavachar, 52 years,
Chief Clerk, Divisional Personnel Office,
Southern Railways, Bangalore-23.

.. Applicant.

(By Sri S. Ranganath Jois, Advocate)

v.

1. The General Manager,
Southern Railways,
Park Town, Madras-3.
2. The Divisional Railway Manager,
(Personnel) Southern Railways,
Bangalore-23.
3. The Chief Personnel Officer,
HQ, Personnel Branch, Southern Railways,
Madras.

.. Respondents.

(By Sri A.N. Venugopal, Advocate)

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This application having come up for hearing this day, Vice-Chairman made the following:

ORDER

This is a transferred application and is received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 ('the Act').

2. Prior to 1983 the applicant was working as a Head Clerk in the pay scale of Rs. 425-700 (pre-revised). But, sometime in 1983, the railway administration, on ascertaining that there were promotional vacancies in the cadre of Chief Clerks, in the time scale



of pay of Rs.550-750 (pre-revised) from the cadre of Head Clerks, initiated necessary steps to fill up those posts in accordance with the rules and orders then in force. In this process, the Chief Personnel Officer, Madras (CPO) in his office Order No.P(GS)608/XII/2/-Vol.XVII dated 11-7-1983 (Annexure-A) prepared a panel of 54 persons suitable to be appointed as Chief Clerks, in which the applicant found his place at Sl.No.34 under the general category. On such empanelment, the applicant and others were appointed in due course. On 12-1-1984 (Annexure-E), the applicant was appointed as a Chief Clerk and he is holding that post from 17-1-1984 on the basis of that order and the order of stay granted by the High Court.

3. Evidently, on the basis of several complaints and otherwise the Railway Administration made an in depth examination into the selections made. On such an examination, the General Manager, Southern Railways ('General Manager') on 24-10-1984, ordered cancellation of the selections and appointments to the posts of Chief Clerks and the same has been communicated by the CPO on 6-11-1984 to the applicant and others (Annexure-II). In Writ Petition No.17888/84 filed under Article 226 of the Constitution, the applicant challenged the same before the High Court. On 22-11-1984, Doddakalegowda, J. issued rule nisi in the case and granted an order of stay, which has continued ever since then. On transfer of the said Writ Petition, the same has been numbered as A.No.7/85.

4. The applicant has urged more than one ground in support of his case. We will notice and deal with them in their order.

5. In justification of the cancellation of the Select List and the appointment orders, the respondents have filed their reply and have produced their records.

6. Sri S.Ranganath Jois, learned counsel for the applicant con-

tends that as on 6-11-1984, on which date the earlier Select List was cancelled, Sri Arjun Prasad was not the General Manager of the Zone and that he was holding this post as on additional or on in-charge basis and the order made by him on 6-11-1984 was without the authority of law and was illegal.

7. Shri A.N.Venugopal, learned counsel for the respondents contends, that the final order had been made by Sri Arjun Prasad on 24-10-1984, when he was the regular General Manager and the same had only been communicated by the CPO on 6-11-1984 for which reason, both communications were valid.

8. We have perused the original records. We find therefrom that Sri Arjun Prasad made the order on 24-10-1984 and on that day he was the regular General Manager of the Southern Railways and the same had been communicated by the CPO on 6-11-1984. As on 24-10-1984, it was undoubtedly open to Sri Arjun Prasad as the regular General Manager to re-examine the matter and direct cancellation of the Select List and the appointment orders issued on the basis of that list only. If the same had been communicated by the CPO on 6-11-1984, that cannot be construed as the decision reached by the General Manager on that day. We see no merit in this contention of Sri Jois and we, therefore, reject the same.

9. Shri Jois next contends that the panel having been exhausted by making all promotions, the question of cancellation of either of them did not arise at all.

10. Sri Venugopal contends, that the power to cancel and re-do the matter could be exercised even after exhaustion of the panel.

11. That panel had been exhausted by giving promotions to all those found therein, is not in dispute. But, the same does not make

any difference to decide as to whether, the entire selection is vitiated by improprieties and it is necessary to re-do the matter. We see no merit in this contention of Sri Jois and we reject the same.

12. Sri Jois contends that the order made by the General Manager cancelling the panel and the appointment order without affording an opportunity of hearing to the applicant was violative of the principles of natural justice and illegal.

13. Sri Venugopal contends, that this contention urged by Sri Jois which had not been urged in the application should not be allowed to be urged and that even otherwise all the facts and circumstances noticed and found were so shocking and improper, which fully justified the decision without issuing individual notices and an opportunity of hearing to persons empanelled and promoted.

14. We have carefully examined the records. We notice that as against 38 vacancies steps had been taken as if there were 54 vacancies. This itself distorted the selections and promotions. But, more than this, illegalities and irregularities, and gross improprieties were committed at every stage of the proceedings, from the very initial stage of constitution of the Selection Committee to the stage of ultimate selection of candidates.

15. One of the Senior Deputy General Managers who made an in depth study, summarised the improprieties in these words:

On going through the note put up by V.O.A and the various documents available, it is seen that the following irregularities have been committed:-

- (1) The number of vacancies instead of being shown as 38 have been shown as 54 and instead of calling for 112 employees, 154 employees were altered for selection.
- (2) The Selection Committee should consist of 3 officers of which atleast one should be from other than the personnel branch. In the present selection board it is seen that all the three officers being to Personnel Branch which is in violation of the orders of the Railway Board's letter dated 4-11-1973 (folio 28) in the matter of constitution of Selection Committee.

- (3) There has been **serious impropriety** in valuation of answer papers such as wrong totalling up of marks, giving more than the maximum marks allotted to the question, awarding marks to more questions than the maximum number permitted to be attempted **etc.** which has in some cases resulted in a few ineligible candidates being called for viva-voce test and also being **selected**.
- (4) There have been erasures, **alterations** and overwritings of marks even in viva voce, which raises suspicion of ulterior motives.
- (5) Marks for seniority for SC/ST candidates have been included and taken into consideration in violation of extant orders on the subject, **thereby** vitiating the selection of SC/ST candidates.

More than one senior officer concurred with these conclusions, with which the General Manager also concurred and made an order on 24-10-1984 in these words:

I have no option but to **quash** the selection proceedings as the irregularities brought out **have** resulted in large number having been brought into the zone of consideration than warranted, based on the incorrect **evaluation** of vacancies. Then the valuation of papers also bristles with serious irregularities in that marks have been allotted to more than the requisite number of questions prescribed to be answered. Consequently the candidates got the benefit of **additional** marks than warranted. The cumulative effect of these two actions has been the empanelment of Junior staff, who were not in the zone of consideration. While no motives can be attached and no vigilance angle is indicated, Administration has to take a correct and legalistic view of the **situation** and not betray the confidence of the staff in the **impartiality** of the Administration. I also share the view projected that it is the responsibility of the Administration to **establish** the impartiality of the entire gamut of Selection Proceedings and where this seems to have not been conducted in **proper** manner to the detriment of the employees promotion prospects, steps are taken to rectify the situation.

2. I do feel that the following two irregularities have contributed in a large measure to the Selection Panel getting vitiated:-

- i) Incorrect assessment of vacancies resulting in larger number of candidates being brought in the zone of consideration, than warranted, and
- ii) Perfunctory manner in which the Answer Books have been valued, with marks **allocated** for more number of questions than prescribed to be answered. The concerned officers need to be warned for the lapse indicated.

3. There are other minor irregularities, as of alterations/over-writings in the mark sheet. These by itself have not vitiated the selection proceedings. Marks for seniority for



SC candidates have been taken into consideration resulting in irregular selection of SC candidates. Since the entire panel is now quashed, these would have no bearing. The instructions in the matter should be brought to the notice of the Selection Committees to avoid re-occurrence.

I had pointed out on an earlier occasion that the Selection Committees should be correctly constituted. It is the business of the Personnel Officers to safeguard and ensure that these are constituted correctly. It is unfortunate that Personnel Branch itself has been erring in this direction. I hope that this will be avoided in future."

The applicant and as many as 53 others, who had been included in the panel, promoted and then reverted have not challenged these findings. On that score itself we must accept these findings. Even otherwise, these findings recorded, on an in depth examination of all the facts and circumstances, should not even be doubted and must be accepted as correct. We, therefore, accept these findings and proceed to examine the contention of Sri Jois.

16. In his application, the applicant had not urged want of notice and an opportunity of hearing as a ground. This ground urged by the applicant is not a pure question of law. If that is so, then we must refuse to examine the same. But, we do not propose to do so and proceed to examine the same on merits.

17. The fact that the applicant was not issued notice and was not afforded an opportunity of hearing is not disputed by the respondents and is established from the records. We also assume that this contention urged by Sri Jois in the normal circumstances is well founded and is concluded by a catena of rulings of the Supreme Court, High Courts and this Tribunal. But, still the question is whether we should interfere or not.

18. What we have noticed, reveals a shocking and even sordid state of affairs in the selections. If the administration after ascertaining the facts, had not undone them, then the very faith of the services, in its impartiality and credibility would have been rudely shaken. Even the public would have lost faith in the administration.

When a grave wrong had been undone and grave failure of justice had been rightly remedied by the Administration, then this Tribunal will not be justified in interfering with the same on any ground or the ground of violation of the principle of audi alteram partem.

19. After all, principles of natural justice, which are not embodied Rules, have been evolved and developed by Courts only to advance the cause of justice or do justice. In *WISEMAN v. BOREMAN*, Lord Morris described natural justice as 'fair play in action'. If we were to interfere with the just action of the respondents and restore the earlier unjust actions, even with liberty to re-do, we will only be helping the applicant to perpetrate the illegalities, improprieties and unjust situations noticed. We are firmly of the view that we will not be justified in doing so.

20. We have earlier noticed that the order of the General Manager had affected the applicant and 53 others, who have gracefully and rightly accepted and suffered the same. But, the applicant alone is relentlessly pursuing his unjust claim on extremely technical grounds. On these facts also, we should be loathe to interfere with the action of the respondents.

21. We will even assume, that the claim of the applicant for a show cause notice and an opportunity of hearing is well-founded. But, from the facts found by the authorities with which we have expressed our agreement, this opportunity to the applicant will not really help achieve anything and will be really an exercise in futility. We need hardly say that we should not indulge in any such exercise at all.

22. In *R v. SECRETARY OF STATE FOR THE HOME DEPARTMENT, EX-PARTE MUGHAL* (1973(3)All E.R.793 at page 803) how often the wrong doers invoke natural justice to their aid and the necessity for courts to be cautious and reject them, Lord Denning

MR expressed thus:

"The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke 'the rules of natural justice' so as to avoid the consequences." On the exclusion of natural justice incertain circumstances, Seervai in his treatise 'Constitutional Law of India' Third Edition, Volume II at page 1431 had expressed thus:

.....that principles of natural justice are intended to serve the ends of justice. If it can be shown that any of the principles will not serve the ends of justice, they "must be dismissed", for otherwise the servant becomes the master, or the means become an end."

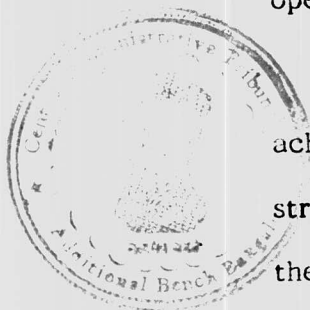
We are of the view that we should apply these principles and reject the claim of the applicant for an opportunity of hearing.

23. On the foregoing discussion, we see no merit in this contention of Sri Jois and we reject the same.

24. Sri Jois lastly contends, that when the very selection had been challenged by one Sri Thiagarajan an unsuccessful Head Clerk for selection before the High Court of Judicature, Madras, the railway administration which had supported the same, cannot resile from the same and contend otherwise.

25. Shri Venugopal contends, that the objections were filed by the Railway Administration in Thiagarajan's case, before the administration noticed and found out the irregularities and that in any event the statements made by them in that Writ Petition not operate against them as estoppel.

26. One Sri Thiagarajan who had not been selected, had approached the Madras High Court, sometime before the Railway Administration re-examined and decided the matter. In that case, noticing the facts as they found then, the railway administration had filed its statement of objections supporting the selections. But, that did and does not necessarily preclude the railway administration to re-examine the matter in depth and rectify the errors noticed by them



and redo the matter. Even otherwise, what was pleaded by them in that case, does not operate as estoppel against them. On these grounds, the Railway Administration is justified in defending the latest order made by them. For all these reasons, we see no merit in this contention of Sri Jois and we reject the same.

27. As we are upholding the order cancelling the empanelment and promotions made pursuant thereto, it is open to the Railway Administration to take all such steps as are necessary to re-do the matter for the vacancies that existed earlier.

28. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application. But, in the peculiar circumstances of the case, we direct the parties to bear their own costs.

Sd _____

VICE-CHAIRMAN

18/6/87

Sd _____

MEMBER(A)

18-6-87

sr/np.



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