CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 942/92 & 1002/92

Transfar Application No: ---

DATE OF DECISION: 2-2-96.

S.Krishnamurthy & anr. Applicants in O.A.942/92

T.B.Sharmik & 5 ors. Applicants in O.A.1002/92
Petitioner

Mr.G.S.Walia
Advocate for the Petitioners

Versus

U.O.I. & Ors.
Respondent

Mr.S.C.Dhavan
Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.HEGDE, Member(J)

The Hon'ble Shri M.R.KOLHATKAR, Member(A)

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NOS:942/92 & 1002/92

Pronounced this the 2nd day of Feb. 1996

HON'BLE SHRI B.S.HEGDE, MEMBER(J)
HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. S.Krishnamurthy
2. K.R.Gaikwad .. Applicants in O.A.942/92

1. T.B.Sharmik
2. J.D'Souza
3. G.B.Singh
4. G.R.sompurkar
5. R.Pereira
6. T.G.Surve .. Applicants in O.A.1002/92

(By advocate Shri G.S.Walia)

-versus-

1. Union of India
   through
   General Manager,
   Central Railway,
   Bombay V.T. 400 001.

2. Chief Workshop Manager,
   Parel Workshop,
   Central Railway,
   Parel, Bombay-400012. .. Respondents in both the O.As

(By counsel Shri S.C.Dhavan)

ORDER(RESERVED)
(Per Shri M.R.Kolhatkar, Member(A))

As the issue raised in these two OAs is identical the same are being disposed of by common judgment. The facts in O.A.942/92 are being taken as illustrative.

...2/-

2. The applicants in O.A.942/92 belonged to ministerial cadre. They were selected on regular basis as Office Superintendent Gr.II in the pay scale of Rs.1600 - 2660 and the notification in this regard was issued on 12-9-90 at Ex.'E' page 17 of the O.A. This exhibit was issued only after completing the requisite formality viz. on 15-2-90 at page 11 is the notice regarding selection. This notice in terms states that the selection is for the post of Office Superintendent Gr.II of Parel and KW(Kurudwadi) Workshop. At Ex.'B' page 14 is the list of candidates declared qualified in the test in which applicants' names appeared. Ex.'C' at page 15 is the panel for appointment dt. 31-8-90 in which also the names of the applicants appeared. There were 15 General posts and the applicant-1 was selected against unreserved post and applicant No.2 was selected against reserved vacancy(SC).

3. The applicants state that they have been working continuously eversince they were promoted to the post on 12-9-90 as mentioned above, but suddenly after a lapse of two years by order dt. 7-9-92, which is the impugned order, Ex.'F' at page 19, selection was cancelled. The applicants have challenged this communication cancelling the selection as being arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. It is contended that no opportunity of making representation was given to the applicants before issue of the said order. It is further contended that the selection was regular and the action of cancellation amounts to abuse and misuse of powers. The impugned action is

...3/-

also stated to be punitive in nature inasmuch as applicants were reverted to a lower post without following the provisions of Article 311 of the Constitution of India.

4. The relief claimed by the applicants is [illegible] to hold and declare the panel in terms of which promotion orders were issued to be valid in law and to quash and set aside the impugned cancellation order dt. 7-9-92.

5. The respondents have opposed the O.A. According to them there are two workshops under the Chief Workshop Manager, Parel viz. Parel Workshop and Kurduwadi Workshop which prior to 1978 was under South Central Railway. After its transfer to Central Railway, the selection of Supervisory posts is made on the basis of pooled seniority in the feeder cadre from Parel & Kurduwadi Workshops. However, the selection held in April,1990 for the post of Office Supdt. Gr.II was held separately for Parel and Kurduwadi based on the seniority of staff of respective units separately for Parel and Kurduwadi. Subsequently, however, the recognised union NRMU raised objections. The issue was discussed and the matter was taken up with Head Quarter level and it was in terms of instructions from head quarter that the impugned letter dt. 7-9-92 was issued. It is contended that the cancellation was necessitated because of the irregularity in the conduct of selection inasmuch as 48 senior persons were included in the list of eligible candidates for the selection whereas as per

pooled seniority list of Parel and Kurduwadi workshops 54 eligible persons ought to have been included. The respondents have enclosed a copy of the letter dt. 31-7-1992 at Ex.R-2 which clearly states that the selection held in April,1990 for the post of OS.II. is irregular and it is treated as cancelled.

6. We had asked the counsel for the respondents to show us the relevant rules under which irregular selections could be cancelled. He has referred to us to a circular No.E(NG)167 PM 1/47 dt. 5-2-69 which states as below:

> "Amendment in Panel: Apanel once approved should not normally be cancelled or amended. If after formation of the panel and approval by the competent authority, it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend it, this should be done after obtaining the approval of the authority next higher than the one that approved the panel. Apanel approved by the DRM may be amended by HOD."

He has also referred to Rule 207 of IREM which provides "Except where specially authorised by the Railway Board separate selections should not be held for particular branches of a Department. One panel should be drawn up for a Department as a whole."

7. The counsel for the applicant has, however, brought to our notice a letter issued by Chief Workshop Manager's office, Parel on 26-7-94 which reads as below :

"In the joint meeting held with both the recognised Unions with SPO PR.on 1.7.94 it has been decided to separate the seniority group of OS II/OS I of Parel and KW Workshop w.e.f. 31-8-90 and 1-9-90(i.e. date of Publication of last panel). Hence Panel of O.S II formed for PR and KW on 31.8.90 and 1.9.90 stands good and further promotion order including restructuring will be on the basis of separate seniority only."

8. The counsel for the respondents stated that this letter was in the nature of an interim communication from the CWM's office and does not have authority of the Head Quarter. On a plain reading of the communication, however, we are of the view that this contention of the respondents is not substantiated.

9. Counsel for the applicant has also relied on the case of Ramlagan Singh & Ors. vs. G.M.,N.E. Railway & Ors. reported at (1991)15 ATC 555 where in para 5 after referring to Abhiman v. U.O.I.,T.A.No. 1645 of 1986 decided on 20-10-1987,by C.A.T.Allahabad Bench and Kailash Pati Saran v. N.F.Railway 1976 Lab IC 919, it has been held that cancellation of panel after the lapse of its life or after it is exhausted is meaningless. The Tribunal has also held that cancellation of the panel after four years is not fortified by principle of natural justice and cancellation was struck down. Similarly is the case in the present O.A. The panel was cancelled two years after it was acted upon by which time its validity has already expired. Such a cancellation

is nonest in the eyes of law apart from being violative of principles of natural justice. We are, therefore, of the view that the O.A. must succeed and we dispose of the same by passing the following order:

O R D E R

O.A. is allowed.

The impugned order of the department dt. 7-9-92 cancelling the panel dt. 31-8-90 and 1-9-90 is hereby quashed and set aside. It is declared that the panel published on 31-8-90 and 1-9-90 and the promotion orders issued in terms thereof were valid in law and continued to be so.

There will be no order as to costs.

MRKolhatkar

(M.R. KOLHATKAR)
Member(A)

BSHegde

(B.S.HEGDE)
Member(J)

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