

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 651 OF 1993.

Date of Decision: July 13, 1999.

A. B. Mishra,

Applicant.

Shri G. S. Walia,

Advocate for
Applicant.

Versus

Union Of India & Another,

Respondent(s)

Shri V. S. Masurkar,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Baweja, Member (A).

- (1) To be referred to the Reporter or not? *Y*
- (2) Whether it needs to be circulated to *N^o*
other Benches of the Tribunal?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 651 OF 1993.

Dated this Tuesday, the 13th day of July, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

A. B. Mishra,
Chargeman Grade-A,
Parel Workshop,
Central Railway,
Parel,
Bombay - 400 012

... Applicant

(By Advocate Shri G.S. Walia)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.

2. Chief Workshop Manager,
Parel Workshop,
Central Railway,
Parel,
Bombay - 400 012.

... Respondents.


(By Advocate Shri V. S. Masurkar)

ORDER (ORAL)

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN.

This is an application filed under Section 19 of the Administrative Tribunals Act. The respondents have filed reply opposing the application. We have heard the Learned Counsel appearing on both sides.

2. Few facts which are necessary for the disposal of this application are as follows :

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The applicant was at the relevant time working as Chargeman Grade-III. In response to an advertisement calling for applications to the post of Hostel Superintendent in the pay scale of Rs. 2000-3200, the applicant also applied. Many other candidates applied for the said selection. It appears, a written test was held followed by a viva-voce test. According to the applicant, he had passed in the written test and he did well in the viva-voce and he was assured that he would be selected but subsequently, at the instance of some other person, the administration has cancelled the entire selection process. Being aggrieved by that action, the applicant has approached this Tribunal. According to him, the competent authority had no right to cancel the selection process and if there was any irregularity, he should have moved the General Manager for approval of his proposal to cancel the selection procedure. It is, therefore, alleged that cancellation of the selection proceedings is arbitrary and illegal. The cancellation order is dated 26.04.1993 which is exhibit 'A' to the original application. The applicant is challenging the legality and the validity of this order and wants it to be quashed, and further direction to the respondents to prepare a panel in pursuance of the notification dated 09.11.1992 and to declare the result and then operate the panel.

3. The respondents in their reply have admitted the issuance of the notification calling for applications, holding of the written test and viva-voce.

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It is also admitted that applicant had participated in the selection process. But they have given a reason that since the notification did not call for applications from officials holding the regular scale of Rs. 2000-3200, there was defect in the selection process and therefore, the competent authority cancelled the same. They have denied the allegation that this cancellation is malafide or that it was done at the instance of some other persons. It is stated that the cancellation has been done as provided in the Rule since there was defect in the notification and is fully justified.

4. After hearing both the Learned Counsels, we find that there is legal defect in the procedure adopted by the competent authority in cancelling the selection proceedings. Normally when selection proceedings are done in pursuance of the notification, it must end in forming a panel and operating the panel as provided in the rules. But if the competent authority feels that there is some defect in the selection process, then he may not accept the recommendations of the Selection Board or Selection Committee as provided in Rule 219 (k) of I.R.E.M, 1989 Edition. It provides that if the competent authority does not accept the recommendations of the Selection Board, he has to refer the matter to the General Manager, who may constitute a fresh Selection Board or issue such order as he considers appropriate. Therefore, the General Manager is given overall powers not only to constitute fresh Selection Board but also to issue such other orders which are appropriate.

If the competent authority had reported to the General Manager that there was some defect in the notification and the selection proceedings are vitiated, then it is for the General Manager to decide whether to order fresh selection or to direct the competent authority to proceed with the present selection. Admittedly, this procedure mentioned in Rule 219 (k) has not been adopted by the competent authority. The Learned Counsel for the applicant also invited our attention to two authorities directly on the point, which are reported in (1989) 11 ATC 715 [P. Peethambaran & 26 Others V/s. Senior Divisional Personnel Officer, Southern Railway & Others] and (1989) 11 ATC 734 [Mrityunjay Sarkar & Others V/s. Union Of India & Others] where in similar circumstances the competent authority had not accepted the recommendations of the Selection Board and ordered fresh selection. In both the judgements it has been held that the competent authority has no such power to cancel the selection and they relied on the ^{old} other rule, namely - 213 (c), which is now equivalent to Rule 219 (k) of the 1989 Edition of I.R.E.M. and held that the competent authority in such a case should make a reference to the General Manager who has powers to pass appropriate orders. In the present case, admittedly and undisputedly the competent authority has not followed the procedure as prescribed in Rule 219 (k). The Learned Counsel for the respondents contended that Rule 219 (k) cannot be attracted when the competent authority has not approved the panel. In our view, Rule 219 (k) applies only

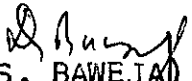
when the competent authority does not want to accept the recommendations of the Selection Board and in such a case he has to make a reference to the General Manager bringing all the facts into his consideration who can pass appropriate orders. Therefore, we feel that in the present case the procedure adopted by the competent authority is not in accordance with the law and liable to be quashed. It was argued on behalf of the respondents that even if a panel had been prepared and the name of the applicant had appeared, he would not get any legal right, since appearance of name in the panel will not create any legal right. It may be so. But once the name comes in the panel, though the applicant may have no legal right to enforce the panel, ~~since~~ the panel cannot be scrapped arbitrarily or de hors the rules, the applicant can therefore request the Court or Tribunal to direct the administration to follow the rules. In the facts and circumstances, since the applicant was one of the candidates and was very much interested in the formation of the panel, it will be well within his rights to request the administration to complete the selection process as per the previous notification.

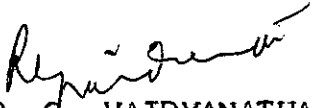
5. Now the question is as to what direction should be given in this particular case. This is a panel of 1993. Now we are in 1999. There is an interim order dated 15.10.1993 that any selection made hereafter would be subject to the final outcome of this application. We have perused the original records produced by the Learned Counsel for the respondents which shows that

viva-voce test had been done and marks had been given and the Selection Committee had finished its work. The only thing left to be done was that the competent authority should have either approved the panel or if he wants to reject the panel or cancel the proceedings he must make a reference to the General Manager. Therefore, we feel in the present circumstances we must direct the competent authority to apply his mind and then take a decision whether to approve the selection process done by the Selection Committee. If he approves the panel, then nothing more need to be done and he should take steps to operate the panel. If he still feels that approval of the panel is not called for in view of defect in the selection process or defect in the notification, then he must make a reference to the General Manager and subject to the directions of the General Manager, further things to be done.

6. In the result, the application is allowed. The impugned order dated 26.04.1993 is hereby set aside. The competent authority should now take a decision in the light of the observations made in para 5 above. The interim order dated 15.10.1993 stating that subsequent selection would be subject to the result of the outcome of this O.A. will continue to be in operation till appropriate orders are passed by the competent authority in the light of the directions given in this order.

In the circumstances of the case, the competent authority is directed to comply with this direction within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(D. S. BAWEJA)
MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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