

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1035/94 /199

Date of Decision: 26 MARCH, 98

AMAR BAHADUR R. SINGH & 9 ors Petitioner/s

Mrs. Neeta V. Masurkar

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr. A L Kasture

for Respondents 1 & 2 only

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri M.R. Kolhatkar, 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? *no*

R. Vaidyanatha
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULETAN' BUILDING NO.6
PRESOT ROAD, MUMBAI 400001

O.A.NO. 1035/94

DATED : THIS 26th DAY OF MARCH, 1998

CORAM : HON. SHRI JUSTICE R.G. VAIDYANATHA, V.C.
HON. SHRI M.R. KOLHATKAR, MEMBER(A)

1. AMAR BAHADUR R. SINGH
2. CHANDRAKANT J. MALVANKAR
3. RAJENDRA DESAI
4. NASEEM KHAN
5. BHASKAR MAHADEO CHAVHAN
6. MOHAN BANDU AREKAR
7. BHARAT MORE
8. SARAFAT SAYED PEER
9. R.K. KOTHAWAL
- 10 HARISH K. PATIL

All are at present working as
Commercial Clerks under
respective Subordinate Units
of Bombay Division in Western
Railway.

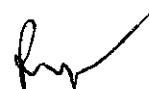
Service to be effected on
Mrs. Neeta V. Masurkar
Advocate for the applicants
Central Administrative Tribunal
Bar Association, Gulestan Bldg.,
3rd floor, Prescot Road,
Fort, Mumbai 400001

(By Adv. Mrs. Neeta V. Masurkar)

..Applicants

V/s.

1. Union of India through
the General Manager
Western Railway
Churchgate
Bombay 400020
2. Divisional Railway Manager(E)
Western Railway
Division Office
Bombay Central
Bombay 8
3. Ravindra K. Padave
AGC-KILE
4. Babubhai N.K.Patel
ACC - NVS
5. Jiwanbhai L. Patel
ACC - AML



6. A S Zacharia
Adhoc Sr. ACC - BCT
7. Dhanesh S. Kadam
ACC - BVT
8. Melvin I. Christian
Adhoc Sr. ACC - CCG
9. Ganesh Namdeo Patil
Adhoc Sr. ACC - BLY
10. Ratiram O. Yadav
ACC BLY
11. Shailesh Jairam Rai
AIC - AML
12. Ajibuddin Ali (ST)
Adhoc Sr. ACC - STC
all of whom are working as
Commercial clerks with Western
Railway, Bombay Division,
Bombay Central, Mumbai

(Respondents Nos. 1 and 2 by
Adv. Mr. A.L. Kasture) .. Respondents

ORDER

[PER: R.G.VAIDYANATHA, VICE CHAIRMAN]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply opposing the application. On the allegation that the respondents have violated interim order passed by this Tribunal, the applicant has preferred Contempt Petition No. 148/94 against the respondents. The respondents have filed reply to the said application. Respondents have also filed M.P.No. 497/95 for modification or variation of the interim order. We have heard the learned counsel appearing on both the sides on merits regarding O.A., C.P. and M.Ps.



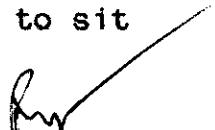
2. The case of the applicants in brief is that they are working as Commercial Clerks in the Western Railway and had applied for the post of Goods Guard. The selection has to be made on the basis of a departmental examination. The applicants appeared for the said examination and a list of successful candidates was published on 11.10.1993. The names of the applicants are shown in the said list. It is, therefore, stated that the applicants are entitled to be appointed as Goods Guard and should be deputed for training. However, the respondents issued another list dated 8.9.94 in which names of the applicants was deleted and names of Respondents Nos. 3 to 12 are shown. It is alleged this impugned notification dated 8.9.94 is illegal. The names of the applicants could not have been deleted from the earlier select list and the private respondents ie., Respondent No.3 Ravindra K. Padave and Respondent No.4 Babubhai N.K. Patel were not eligible at all for appearing in the departmental examination. Therefore, the applicants have approached this Tribunal for quashing the second selection list dated 8.9.94 and they want that the earlier list dated 11.10.1993, which includes the names of the applicants, should be implemented and the applicants should be sent for training and to be promoted as Goods Guard.

3. The case of official Respondents Nos. 1 and 2 is that there is some mistake in preparing the list of



select candidates dated 11.10.93 and the mistake was rectified by issuing fresh list dated 8.9.94. Respondents Nos. 3 to 12 had appeared in the examination and they had passed, but by mistake their names had been omitted in the select list dated 11.10.93 and this was corrected by taking approval from the competent authority and then by issuing the select list dated 8.9.94. Respondents 3 to 12 are from the same feeder cadre as the applicants and since they are seniors to the applicants their names came to be included in the selection list by deleting the names of the applicants. As far as Respondents 3 and 4 are concerned, they were eligible to sit in the examination and correction slip has been issued permitting them to sit in the examination. It is, therefore, prayed that there is no merit in the O.A. and it should be dismissed. The private respondents 3 to 12 have been served but they have not appeared before the court to contest the case.

4. The learned counsel for the applicant has questioned the correctness and legality of issuing a second list dated 8.9.94. It was argued that the procedure adopted by the respondents 1 and 2 in issuing the second list is illegal and is liable to be quashed; at any rate, it was argued the names of the applicants should not have been omitted in the second list. Respondents 3 and 4 were not included in the list of eligible candidates dated 6.8.93 and therefore they should not have been permitted to sit



for the examination or to declare them of having passed in the examination. The learned counsel for the respondents 1 and 2 refuted these contentions and contended that the procedure adopted by the official respondents is as per rules and no ground is made out for interference.

5. The main argument of the learned counsel for the applicant is that the selection list once published could not have been amended or altered by the Department. This argument has no merit for the simple reason that Rule 219(1) of the Indian Railway Establishment Manual (Vol.I) clearly provides that if it is found subsequently that there were procedural irregularities or other defects then the selection panel can be cancelled or amended provided approval of the authority higher than the authority who approved the original panel is obtained. In the present case the learned counsel for the respondents brought to our notice that the higher authority has already granted permission or approval to cancel the list. We may also refer to a decision of the Supreme Court in the case of UNION TERRITORY OF CHANDIGARH Vs. DILBAGH SINGH & ORS, [(1993) 23 ATC 431] where the Supreme Court has observed that a select list can be cancelled for bonafide and valid reasons, but of course not arbitrarily.

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6. Even without rules, there is inherent right in every department or authority to cancel or modify a list if the original list is vitiated by mistake, error or fraud or some other defect. In the present case we find that there is a provision in the Railway Establishment Manual viz., that the competent authority can modify, alter or amend the list and we have the authority of the Supreme Court which says that for bonafide and good reasons a list can always be cancelled or amended.

7. In the present case the respondents have pleaded and they have brought to our notice that the names of the Respondents 3 to 12 had not been included in the selection list due to some mistake or error, though they had appeared in the examination and passed in the examination. The learned counsel for the applicants contended that these things are manipulated. We have perused the records produced by the learned counsel for the respondents and find that the names of Respondents 3 and 12 are shown in the passed list. However, when they prepared the final selection list their names have been omitted. It is also seen that Respondents 3 to 12 are admittedly seniors to the applicants. The official respondents have produced the seniority list along with their first written statement which clearly shows that Respondents 3 to 12 are senior to the present applicants.

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8. At one stage the learned counsel for the applicants contended that since this is a promotion by selection, the question of seniority does not arise and it is purely on the basis of merit. There is no merit in this argument. Rule 219 provides the procedure for promotion by selection. After the examination is held and a list of selected candidates is prepared, sub-clause (J) provides that the names shall be arranged in the order of seniority. The applicants have passed in the examination and Respondents 3 to 12 have passed in the examination and therefore their names will have to be arranged in the order of seniority. Respondents 3 to 12 are seniors to the applicants and there are only 10 posts from the feeder cadre of Commercial Clerks. There are quotas to different feeder cadres and we are presently concerned only with Commercial Clerks and the quota for their category is 10 posts. When Respondents 3 to 12 are seniors to the applicants and there are only 10 posts for that category, naturally Respondents 3 to 12 will find a place in the panel and the names of the applicants had to be deleted. In our view the action taken by the department is perfectly justified and is as per the rules.

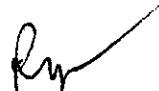
9. The only other question is whether Respondents 3 and 4 were not eligible to appear for the examination. It is true that their names did not find place in the eligibility list dated 6.8.93 produced by the applicants

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which is at page 24 of the paper book. However, respondents have pointed out that their names had been omitted and correction slips have been issued prior to the examination. In the two annexures attached to the second written statement we have one correction slip dated 1.9.93 which says that R.K.Padave, Respondent No.3, is eligible to appear for the examination and he should be permitted to sit for the examination. Then there is an eligibility list dated 5.8.93 wherein the names of many persons are shown as eligible including B.N.K. Patel, Respondent No.4. Therefore, even prior to the examination we find that correction slips had been issued showing eligibility of Respondents 3 and 4.

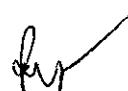
10. The learned counsel for the applicants invited our attention to a case reported in AIR 1986 SC 1680 [S.GOVINDRAJU Vs. K.S.R.T.C. & ORS.] wherein the Supreme Court has observed that if a select list has to be cancelled it must be done after issuing a show cause notice.

In the present case the impugned order itself purports to be a show cause notice to the applicants. The order mentions how the mistake has occurred and how the names of the applicants are to be deleted and Respondents 3 to 12 to be added and after mentioning these reasons the applicants were called upon to show cause as to why such action should not be taken. Instead of replying to the



show cause notice the applicants have rushed to the Tribunal with this O.A. and obtained an order of status quo. Therefore, the argument that the department has cancelled the select list without giving show cause notice is not correct. The impugned order itself is styled as a show cause notice and the applicants were given opportunity to make the representation which they have not availed. We are not impressed by the arguments of the learned counsel for the applicants that the applicants have not received a copy of the said order. If they have not received a copy they could not have filed this O.A. along with that order.

11. After taking into consideration the entire facts and circumstances of the case and the law bearing on the point, there is no difficulty to hold that as per Railway Establishment Manual the department has powers to cancel a selection list for irregularities or defects or errors after taking permission of higher authorities. This has been done in this case as per rules. We have already stated how Respondents 3 to 12 had appeared in the examination and had passed in the examination, by oversight or mistake their names had not been included in the list and it is also an admitted fact that Respondents 3 to 12 are seniors to the applicants from that particular feeder cadre. Therefore, as per rules the selection panel has to be prepared on the basis of seniority and therefore the names of Respondents 3 to 12



are to be mentioned in the list as per seniority and since the quota from this feeder cadre is only 10, the names of the applicants had to be deleted and hence we are satisfied that action taken by the department is perfectly justified as per rules. We do not find any irregularity or illegality or arbitrariness in the cancellation of the earlier list and in the issuance of the new list.

12. Though the applicants were Commercial Clerks as on the date of this application, it is now brought to our notice and conceded by both the sides that applicant Nos.3 and 10 were promoted as Guards in 1996 and all the remaining 8 applicants have been promoted as Head Booking Clerks. Therefore, we find that all the applicants have earned one promotion during the pendency of this case. The learned counsel for the Applicants submitted that all the applicants wanted promotion as Goods Guards, which is an ex-cadre post and therefore the emoluments are better. Since the applicants belonged to the cadre of Commercial Clerks which had only a quota of 10 posts the selection has to be made as per seniority from amongst the successful candidates and the applicants cannot have any grievance when senior ten people have been selected. It is open to the applicants to take a chance for being selected to appear in the next examination for the post of Goods Guard again when the next selection takes place and subject to their passing and subject to their



seniority for selection. If under the rules, the applicants cannot appear for that examination, since they have already got one promotion in a different channel, we hereby direct the respondents to relax the rules and allow the applicants to appear in the said examination, subject to the applicants giving an undertaking that they will forgo the promotion which they have already got after getting the new promotion as Goods Guard in case they are selected.

13. In view of the above reasoning the applicants have no case and, therefore, the application is liable to be dismissed and the interim order already granted 'to maintain status quo' has to be vacated. In view of this position, M.P.No.499/95 filed by the respondents for modification of the interim order has become infructuous and does not survive.

14. M.P.No.807/96 is an application filed by the applicants for certain direction in the form of interim relief. In the view we have taken that the application is liable to be dismissed, this M.P. for any additional interim relief does not survive for consideration.

15. Now coming to the Contempt Petition No.148/94, it is alleged by the applicants that in spite of status quo order passed on 26.9.94, the respondents have implemented the impugned selection list by sending some more

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candidates for training etc., and thereby they have committed contempt of the court.

16. In reply the respondents have stated that the concerned branch received the interim order on 27.9.94 some time later in the day and on that day itself in the morning they had published the final list and that those candidates have been called for training. It is also their case that after coming to know of the interim order subsequently they have written letters for cancellation of the training programme etc.

17. After hearing both the sides, we find that there is some delay on the part of the department in sending the communication for cancellation of the training programme of the candidates in the impugned list, but there is nothing on record to suggest that there was wilful disobedience on the part of the concerned official so as to attract action by this Tribunal by exercising contempt jurisdiction. Every disobedience is not contempt of court. There should be deliberate and wilful disobedience to attract the penal consequences of the law of contempt. If there is some delay or inaction on the part of the respondents in recalling candidates who have been directed to undergo training, it would not amount to wilful contempt so as to initiate action under the law of contempt. Hence having regard to the facts and circumstances of the case we are not inclined to take any



action on the Contempt Petition. In our view no case of wilful disobedience of the order of the Tribunal is made out. Hence the Contempt Petition is liable to be rejected.

18. In the result the application is dismissed. The interim relief is hereby vacated. M.P. Nos. 497/95 and 807/96 are disposed of having become infructuous for reasons mentioned during the course of the order. Contempt Petition No. 148/94 is dismissed. However, we are giving liberty to the applicants to appear for the next examination for selection to the post of Goods Guard, if they are interested and in such a case we direct the Respondents to allow the applicants to appear for in the said examination subject to the observations made in the para No.12 above. In the circumstances of the case there would be no order as to costs.

M.R.Kolhatkar
(M.R.Kolhatkar)

Member(A).

R.G.Vaidyanatha
26.3.98
(R.G.Vaidyanatha)

Vice Chairman

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