

Central Administrative Tribunal
Mumbai Bench, Mumbai

Camp at Nagpur

Dated, this the 28th April 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. RATAN PRAKASH, MEMBER (J)

O.A. No. 138 of 1998

Shri Shivmani Yadav,
S/o Shri Ramdhare,
R.C. Fitter, Central Railway,
Nagpur Division,
Nagpur. ... Applicant

(By Advocate: Shri M.A. Rashid)

Versus

1. Union of India through
the General Manager,
Central Railway, Mumbai CST, Mumbai.
2. The Divisional Railway
Personnel Manager,
Central Railway, Nagpur Div.,
Nagpur. ... Respondents

(By Advocate: Shri R.S. Sunderam)

O.A. No. 1172 of 1997

S/Shri

1. Shri Ashok T. Wakode,
S/o Shri Tukaram Wakode,
Lineman Gr. II,
RBI-I-181B Railway Colony,
Katol, Dist. Nagpur.
2. Omprakash U. Gajbhiye
S/o Shri Udararam Gajbhiye
3. Shyamkumar L. Dhenge,
S/o Shri Laxman Dhenge. Applicants

(By Advocate: Shri R. Radhakrishnan)

Versus

1. Union of India through
General Manager,
Central Railway,
Mumbai, C.S. Terminus,
400001.
2. Divl. Railway Manager (Personnel),
Central Railway, Nagpur.

3. The Chief Engineer (Electrical),
Central Railway, Mumbai CST.

4. Shri S.G. Dhonde,
Remote Control Fitter,
Nagpur.

5. Shri Tiriyoginath Mahadeo,
Wireman (TRD), Chunabatti,
Ajni,
Nagpur-440003. ... Respondents

(By Advocate: Shri R.S. Sunderam)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As these two O.A.s involve common questions of law and fact they are being disposed of by this common order.

2. The Electrical Dept. in the Central Railway is divided into three wings namely Traction and Distribution (TRD) Wing; Traction Rail Staff (TRS) Wing; and Electrical and General Wing. Posts of Chargeman Gr. B (Rs.1400-2300) in TRD Wing are to be filled through three sources namely:

(i) 50% vacancies are to be filled through Direct Recruitment from amongst Apprentice Mechanics;

(ii) 25% vacancies are to be filled by promotions from amongst Skilled Artisans Gr. I in TRD Wing; and

(iii) 25% vacancies are to be filled through selection on the basis of written test as well as interview in which Artisans Gr. III (Rs.950-1500); Skilled

Artisans Gr. II (Rs.1200-2040) and Skilled Artisans Gr. I (Rs.1320-2040) working in TRD Wing possessing the necessary eligibility qualifications may compete, against what is called rankers quota.

3. By Respondents' Notification dated 16.8.95 (Exhibit 3 in O.A. No. 138/98) applications were called from eligible candidates to fill up 7 vacancies of Chargeman Gr. B (2 for SC; 2 for ST and 3 for others) from 25% rankers quota. A panel was published on 3.9.96 (Ann. A-6 of O.A. No. 1172/97), in which the three applicants in O.A. No. 1172/98 were placed, while applicant in O.A. No. 138/98 was not. Thereupon applicant in O.A. No. 138/98 along with two others filed O.A. No. 1251/96 which was disposed of by the CAT, Bombay Bench vide order dated 29.9.97. In its order, the Bench noted that the main grievance in that O.A. was that respondents had given notional marks for seniority and on that basis the selection list (panel) had been prepared. The Bench recorded the statement of Respondents' counsel that respondents had decided to delete the notional marks for seniority and would prepare a fresh selection list (panel) on the basis of written test and viva-voce test alone. The Bench noted that in view of this submission nothing further survived in O.A. No. 1251/96 and disposed of the same at the admission stage itself after calling upon respondents to prepare a fresh panel after removal

of the benefit of notional marks for seniority, with liberty given to those applicants that in case they were aggrieved by the fresh panel, it would be open to them to challenge the same in accordance with law.

4. Accordingly respondents by the impugned order dated 11.12.97 issued a fresh panel which the subject matter of challenge in the two O.A. presently before us.

5. In O.A. No. 138/98 applicant Shri Shiv Mani Yadav challenges the aforesaid panel dated 11.12.97 on account of his non-inclusion in the same and asserts that his name should have been found place at Sl. No.3 in the General Category.

6. Respondents have pointed out that against the seven vacancies, only four candidates were empanelled - three from General Category and one from SC Category. Against these three vacancies in the General Category, one of them (Sl. No.2) was filled by an SC candidate who qualified on his own merit by General Standard, as a result of which applicant Shri Yadav could not be included in the list of three General Candidates. In this connection Respondents have invited our attention to Railway Board's circular dated 15.3.73 which unequivocally states that SC/ST candidates can be considered against reserved vacancies and also against unreserved vacancies if their turn falls as per the seniority list but for that they have to

qualify with general standards like others. Respondents state that Shri S.S. Somkuwar an SC candidate at Sl. No.2 has clearly qualified as per General Standard besides being senior to applicant Shri Yadav and hence Shri Somkuwar became entitled in law to be considered against a General Post on merit. They emphasised that this circular dated 15.3.73 has been vindicated by the Hon'ble Supreme Court's judgment in R.K. Sabharwal Vs. State of Punjab, AIR 1995 SC 1371, a gist of which has been circulated vide respondents' letter dated 21.8.97 (Exhibit R-2 in O.A. No. 138/98). Respondents further state that the two unfilled posts earmarked for ST candidates and one unfilled post for SC candidate will be carried forward for future selections.

7. Applicant Shri S.M. Yadav in his rejoinder has made various assertions, the thrust of which is that reserved category candidates cannot be appointed against General Posts, even if they are senior enough and qualify on their own merit, while General Category candidates like himself have a claim for empanelment and promotion against reserved post if they cannot be filled by reserved category candidates. Manifestly these assertions are clearly contrary to law. The preceding paragraph makes abundantly clear that SC/ST candidates can be considered against unreserved vacancies if their turn as per seniority list falls and if they succeed in qualifying as per General Standards along with others, but reserved vacancies

cannot be filled by unreserved candidates unless those reserved vacancies are specifically dereserved after obtaining all the necessary clearance and in accordance with prescribed procedure.

8. In the matter before us, we find ourselves unable to help applicant Shri Yadav and hence O.A. No. 138/98 fails.

9. Coming to O.A. No. 1172/97 the first ground taken is that R-2 having admitted in his reply dated 23.9.97 (Ann. A-2) to the Advocate's notice that the issue was in dispute and pending before CAT vide O.A. No.1251/96 earlier filed by Shri Shiv Mani Yadav (applicant in O.A. No.138/98) in not promoting applicants based on the panel dated 3.9.96 respondents should not have arbitrarily and suddenly issued the impugned panel dated 11.12.97 without obtaining the Tribunal's permission. We have already stated in Para 3 above that the aforesaid O.A. no.1251/96 was disposed of by CAT, Bombay Bench vide its order dated 29.9.97. A persual of the order dated 29.9.97 makes it clear that the aforesaid O.A. was disposed of after the Tribunal had taken note of respondents' counsel's assertion that respondents had decided to prepare a fresh select list on the basis of written test and viva-voce test alone, and after excluding notional marks on account of seniority. It is on that basis that the panel dated 3.9.96 was replaced by the

impugned panel dated 11.2.97 and hence it cannot be said that any further permission of the Tribunal was required. Hence this ground fails.

10. The second ground taken is that respondents by deleting the names of applicants after a lapse of one year and three months and that too without giving them any show cause notice have violated the principle of natural justice enshrined under Article 311(2) of the Constitution.

11. Article 311(2) of the Constitution will ~~not~~ be applicable in this case only if applicants in the first instance had been appointed to those posts. Mere inclusion in a select list or panel does not mean that the person has been actually appointed, and in the absence of applicants being actually appointed, Article 311(2) does not get attracted.

12. As regards the question of violation of the principle of natural justice, applicants' counsel Shri Radhakrishnan has relied upon the Hon'ble Supreme Court's judgment in S.Govindaraju Vs. K.S.R.T.C. AIR 1986 SC 1680, the relevant portion of which is extracted below:

"Once a candidate is selected and his name is included in the select list he gets a right to be considered for appointment as and when arises. On the removal of his name from the select list serious consequence entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for the affording any opportunity to the employee, the

principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation Giving an opportunity of explanation would meet the bare minimal requirement of natural justice."

13. It is because the earlier panel dated 3.9.96 was not in accordance with rules and instructions that respondents informed the Tribunal in O.A. No.1251/96 that a fresh select list (panel) would be prepared after deleting the notional marks given for seniority which was noted by the Bench in its order dated 29.9.97. In this connection respondents' counsel Shri Sunderam has cited the Hon'ble Supreme Court's judgment in U.T. of Chandigarh Vs. Dilbagh Singh & Others 1993 (1) CLR 517, where a list prepared by a Select Committee was cancelled because the Appellant Administration found that the same was prepared in an unfair and unjudicious manner, without giving the selectees an opportunity of being heard. The Hon'ble Supreme Court held in that case that the selectees were not entitled to be heard before cancellation of the select list. We are further supported by the Hon'ble Supreme Court's judgment in State of M.P. & Anr. Vs. Mahesh Kumar AISLJ 1998 (1) 191 wherein it has been held that there is no vested right for promotion made ~~made~~ by illegal orders and no show cause notice was necessary while ~~while~~ recinding the same. The judgments in both Dilbagh Singh's case (Supra) as well as Mahesh Kumar's case (Supra) were delivered by three member benches and are more recent in time than the judgment in Govindaraju's case (Supra). Under the

circumstances we have no hesitation in holding that there has been no violation of the principle of natural justice in the cancellation of the panel dated 3.9.96. Hence this ground also fails.

14. The next ground taken is that: the panel dated 3.9.96 in which applicants were placed, was approved by DRM, Nagpur (R-2) but the impugned panel dated 11.12.97 has failed to quote the authority which approved the same, and is hence void ab initio. We note that both the panel dated 3.9.96 as well as the one dated 11.12.97 have been signed on behalf of the DRM, Nagpur. While the panel dated 3.9.96 states that the approval of the DRM has been taken, the panel dated 11.12.97 states that the Chief Engineer Electrical, Central Railway, Mumbai CST has given provisional approval. In our view, the approval granted by the CEE is sufficient authority for holding the impugned panel dated 11.12.97 as valid. It needs to be mentioned here that while the jurisdiction of the DRM is confined to a Division falling within a Zone, that of the CEE covers the entire Zone. Hence this ground also fails.

15. The next ground taken is that the post of Charge man Gr. B is in the regular channel of promotion of applicants, and is neither an ex-cadre post nor a general post covered by Railway Board's letter dated 28.1.88 (Ann. A-5) and under the circumstances, alteration in the earlier panel dated 3.9.96 by a subsequent impugned panel dated

11.12.97 was unwarranted. Respondents in their reply have pointed that posts of Chargeman Gr. B in the 25% rankers quota, are open to competition from persons belonging to different wings having different seniority in their respective wings. In respondents' circular dated 20.12.96 (Ann. R-2) it has been clearly specified that as the employees are from different artisans categories and grades, ~~and~~ it is not permissible to allow notional marks for seniority to them. As admittedly Artisans Gr. III, Artisans Gr. II as well as Artisans Gr. I can compete in the selection for the vacancies of Chargeman Gr. B in the 25% rankers quota, it is clear that they belong to different seniority units, and Respondents' circular dated 20.12.96 read with circular dated 28.1.98 would be fully applicable and the withdrawal of notional marks for seniority given earlier was therefore fully in order. We are fortified in our view by the Hon'ble Supreme Court's judgment in M. Ramjayaram Vs. G.M., S.C.Railway & Others (1996) 8 SCC 266 wherein it has been held that where the contesting candidates were not from the same seniority unit but from different units, the criterion of seniority contained in Rule 320 of the Railway Establishment Code, was not applicable and hence giving weightage marks to those with higher scale of pay was arbitrary. Hence this ground also fails.

16. The next ground taken is that applicants had found their place in the earlier panel dated 3.9.96 independently of the notional marks allowed

to them on account of seniority and under the circumstances respondents had no locus standi to delete their names on the pretext of withdrawing the notional marks. However, we find that applicants themselves admit that the notional marks given to them on account of seniority helped them to be called for the interviews. Under the circumstances they cannot deny that it was the award of notional marks to them on account of seniority that was instrumental in their inclusion in the panel dated 3.9.96. Hence applicants claim to have found place in that panel independently of the notional marks awarded to them on account of seniority also fails.

17. Lastly it has been contended that respondents have initiated selections for the post of J.E. (II) against 25% Rankers Quota vide Notification dated 2.2.98, which is open only to candidates of TRD cadre of Electrical Dept., and not for employees of different departments or outsiders, and as such the award of notional marks for seniority would be in order. It has also been contended that the assessment of vacancies of JE (II) in 25% Rankers Quota as well as community-wise breakup notified vide Notification dated 2.2.98 is contrary to the provisions of reservation, maintenance of roster and Hon'ble Supreme Court's directives. M.A. No. 106/98 has also been filed by applicants seeking to amend the O.A. to add certain paragraphs in support of the challenge to Notification dated 2.2.98.

18. In the two O.As before us we are limiting ourselves to the cancellation of the earlier panel dated 3.9.96 and its substitution by the panel dated 11.12.97 for the post of Chargeeman Gr. B in 25% Rankers Quota initiated vide Notification dated 16.8.95. If applicants have any grievance in regard to the filling up of the posts of JE (II) initiated vide Notification dated 2.2.98 it is open to them to challenge the same separately in accordance with law if so advised. That grievance cannot be made a ground to challenge respondents' panel dated 11.12.97.

19. In the result O.A. No. 1172/98 also warrants no interference.

20. O.A. No. 138/98 as well as O.A. No. 1172/97 are therefore dismissed. No costs.

21. Let copies of this order be placed in each case record.

(Ratan Prakash)
Member (J)

(S.R. Adige)
Vice Chairman (A)

/GK/

Dated: 28.4.1999.

This Judgment is pronounced in the Open Court to day by the Bench comprising of Justice Shri R.G.Vaidyanatha, Vice-Chairman and Shri D.S.Baweja, Member(A) under Rule 106 of the CAT Rules of Practice at Mumbai.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

11/99