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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR
(AT JAIPUR).

T.A. No. 1396/86

Date of decision: May 8, 1989

Shri Madan Lal & Anr.

Plaintiffs/ Petitioners.

Shri Rajesh Jain

Counsel for petitioners.

Versus

Union of India & others

...Defendants/Respondents.

CORAM:

THE HON'BLE MR. B.S. SEKHON, VICE CHAIRMAN.

THE HON'BLE MR. G.C. SINGHVI, ADM. MEMBER.

G.C. SINGHVI

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The Plaintiffs who were under training for Train Examiners in the pay scale of Rs 425-700(R) in the Western Railway, instituted a Civil Suit on 26.5.1982 in the Court of learned Munsif, Jaipur City(East) for issue of a perpetual injunction against the defendants directing them not to obstruct their training in any way and not to implement their orders dated 4.5.1982 and 14.5.1982 whereby provisional panel(notified on 18.12.1981) for promotion to the post of Train Examiners was cancelled,. Simultaneously, an application was made by the plaintiffs in the same Court on the same day for the issue of a temporary injunction. This temporary injunction was issued on 14.7.1982. The suit was then transferred to the Court of another learned Additional Munsif Jaipur City and then to the Court of learned Additional Civil Judge No. 4 Jaipur City from where it was transferred to the Tribunal by virtue of operation of section 29(1) of the Administrative Tribunals Act, 1985 and rechristened as Transferred Application No. 1396/86.



2. Shorn of unnecessary details, the plaintiffs' case is that in September, 1981 an examination was conducted for appointing Train Examiners in the pay scale of Rs 425-700(R) against the 20% quota, 11 employees, including the two plaintiffs, appeared at the examination. Out of these only 3 persons (including both the plaintiffs) passed the written examination. All these three persons were interviewed on 7.12.1981, and in the interview both the plaintiffs were declared successful. In pursuance a notification dated 19.12.1981 was issued by the Divisional Office, Jaipur placing the names of both the plaintiffs on the provisional panel for appointment as Train Examiners in the pay scale of Rs 425-700(R) against 20% quota. And vide order dated January 20, 1982 the plaintiffs were asked to undergo training for promotion to the post of Train Examiners at Technical School, Ajmer. The plaintiffs, accordingly, joined that Training Institute and started undergoing the training. On 14.5.1982 the Divisional Office, Jaipur issued an order cancelling the Panel notified vide order dated 18.12.1981. An inkling as to the ground on which this Panel was cancelled was given by Western Railway Headquarter letter dated May 4, 1982. It was that an irregularity had been committed in conducting the selection because it was required to be held for recruitment of Apprentices TXRs against 20% quota of Rankers. In view of this the Headquarter Office approved cancellation of the Panel notified on 18.12.1981. The plaintiffs' contention is that as they were undergoing training at Ajmer after they had duly been selected for the post, neither their selection, nor their training should be cancelled. The plaintiffs' grievance is that before issuing the impugned orders dated May 4, 1982 and May 14, 1982 the defendants did not accord to them an opportunity of being heard and presenting their cases against the issue of these orders. On these pleadings the plaintiffs sought the aforesaid reliefs and in view of the urgency of the

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matter also sought exemption from serving a notice under section 80 of the CPC.

3. The defendants contested the suit *inter alia* on the ground that, whereas, the Selection was to be made and Selection Board was to be constituted for the posts of Apprentice Train Examiners, erroneously it was done for the posts of Train Examiners and the provisional panel drawn in pursuance thereof. As such the entire overt action initiated for this selection was void-*ab initio*. The defendants conceded that the plaintiffs were sent for undergoing training at Ajmer but when the Panel was rescinded, the plaintiffs were recalled from there but because of the temporary injunction issued by the Court of learned Additional Munsif, Jaipur City(West) the plaintiffs had to be sent back to the Training Institute. The defendants also stated that the plaintiffs have not been awarded any punishment, nor have they been demoted from their substantive posts, and therefore, there was no question of affording them any opportunity to present their case. It was merely a slip of pen which resulted in the erroneous Constitution of a Board and for rectifying this error it was not necessary to hear the plaintiffs. The defendants also took the plea that rescission of a provisional panel on discovery of some error therein, was in conformity with the provisions of Rule 216(J) of the Railway Establishment Manual. Finally, the defendants stated that in the absence of service of notice under section 80 of the CPC the suit was not maintainable. On these pleadings the defendants prayed that the suit may be dismissed with costs.

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4. We have gone through the pleadings of the parties and the documents on record. Shri Rajesh Jain, Advocate appeared before us as counsel for the petitioners. The respondents, however, remained unrepresented. Therefore, arguments of the learned counsel for the petitioners were heard.

i) Shri Sukh Dutt vs. The State of Himachal Pradesh, Simla and other⁽¹⁾. An A.S.I. of police of H.P. had been sent for undergoing training. Subsequently, as his conduct in the discharge of his duties during the course of investigation of a case was found to be reprehensible, he was recalled from training for being dealt with suitably. It was held that an officer selected for training acquires a statutory right and cannot be recalled from training.

ii) Mazharul Islam Hashmi Vs. State of U.P. and Another (2). It was held by the Supreme Court that it is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case.

iii) Manohar Singh Vs. State of Madhya Pradesh and others (3). The M.P. High Court held that when the petitioner was selected for training as Sub-Inspector of police and he received the said training and if thereafter it came to the notice of the authorities concerned that the petitioner gave false information in the application and on that ground or on the ground that a criminal case was pending against him he was unfit for the post of Sub-Inspector of Police, before passing an order, the principles of natural justice required that the petitioner was given an opportunity of being heard in the matter.

iv) Shri Ram Vs. District Inspector of Schools, Azamgarh and others (4). The Allahabad High Court held that the principles of natural justice had not been complied with. The Inspector should have afforded the petitioner an opportunity of hearing before he could validly rescind or cancel his appointment.

(1) 1977(2) SLR 433
(2) 1979(3) SLR 297
(3) 1982(1) SLJ 643
(4) 1983(1) SLJ 459

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v) S.Govindaraju Appellant Vs. K.S.R.T.C. and another (5). The name of a candidate was included in the Badli list of workers and in pursuance thereof he was given employment. The candidate had been in continuous service for a period of more than one year when the order of termination was issued without giving him any opportunity of hearing. It was held by the Supreme Court that the order of termination was in violation of the principles of natural justice.

8. The whole case may now be recapitulated. An examination was conducted on 19.9.1981 for filling up the posts of Train Examiners in the pay scale of Rs 425-700(R), 11 persons, including both the petitioners, applied therefor, 3 out of the passed the written examination (Result declared on 1.12.1981). These three persons were interviewed on 7.12.1981. Both the plaintiffs cleared the interview while the third candidate (Shri Jagdish. (B) could not. A Panel, having the names of only two plaintiffs, was, therefore, notified by the Divisional office, Jaipur vide their letter dated 18.12.1981. In pursuance both the plaintiffs were sent to Ajmer for undergoing 32 months promotion training (vide D.R.M. Jaipur letter dated 6.5.1982). In the meantime the Western Railway, Headquarters on 4.5.1982 approved cancellation of the Panel on the plea that an irregularity had been committed in conducting the selection as it was required to be held for recruitment of Apprentice TXRs against 20% quota of Rankers but before issuing the order dated 4.5.1982 did not issue any show cause notice and/or give an opportunity of hearing to the petitioners whose interest would adversely be affected by the decision. Instead, a letter was issued on 26.5.1982 to the Technical School, Ajmer seeking the return of both the plaintiffs from

training. The plaintiffs were returned in pursuance of this letter, but because of the temporary injunction issued by the learned Additional Munsif, Jaipur City (West) the plaintiffs had to be sent back to Ajmer to complete the remaining training. From this narrative of facts it is clear that the principles of natural justice have not been followed in this case. The Railway Administration, before taking the decision, as contained in their letter of 4.5.1982 and as reiterated in their letter of 14.5.1982, should have afforded an opportunity to the petitioners for putting forward their ^{just} case but this was not done. These issues are thus, found in favour of the plaintiffs.

9. In view of our findings set out in the preceding para we do not deem it necessary to deal with the implications of para 216(J) of the Indian Railway Establishment Manual which, according to the respondents, empowers the competent authority to cancel the Panel. In view of the request contained in para 10 of the Plaintiff for granting leave envisaged by section 80 (2) of the Code, the learned Munsif had, vide his order dated 26.5.1982, directed that the Suit be registered subject to the objection in respect of notice under section 80 of Code of Civil Procedure. It is evident that the suit pertains to a matter in which urgent/immediate relief was needed, as such the plaintiffs have been rightly granted leave visualised by section 80(2) of the Code of Civil Procedure. In view thereof the objection of the ^{non} defendants about the/maintainability of the suit for want of notice under section 80 of the Code is hereby overruled.

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10. In view of what has been said and discussed above, the action of the respondents in issuing the communications dated 4.5.1982 and 14.5.1982 cancelling the Panel notified on 18.12.1981 and recalling the petitioners from training institute in pursuance thereof are positively violative of

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the principles of natural justice. The impugned orders dated 4.5.1982 and 14.5.1982 are, therefore, quashed. The petitioners have already completed their training and have been holding the posts of Train Examiners for a number of years. The respondents should, therefore, allow the petitioners to continue holding these posts with retrospective effect from the date they joined the training institute at Ajmer, treating the Panel notified on 18.12.1981 to be valid and treating the petitioners as qualified and trained for holding the posts of Train Examiners. The petitioners shall be given appropriate consequential benefits also by the respondents. With these directions to the respondents the Transferred Application is allowed but in the circumstances of the case there will be no order as to costs. The temporary injunction order issued is hereby vacated.



Singhvi
(G.C. SINGHVI)
ADM. MEMBER.

8-5-89

B.S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN.

8-5-89

Copy of decision sent to the —
Let. ~~Shri~~ ^{affd} ~~Mandir Lal Sharma~~ Shri ~~Mangal Singh~~ Shri ~~Sharma~~, ^{1/2} ~~4th Training C/o~~
Respo. 1 (Cg. M. W. Rly., Bombay)
Vide APP. 2051292 ^{15/5/89} ~~15/5/89~~ ^{OB}

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