

(60)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No.s. 680/89; 933/89; 952/89;
~~Ex-Amt~~ 976/89; 987/89; 993/89;
2/90; 88/90; and 144/90.

Date of Decision : 25.7.90.

Petitioner.

SHRI G.V.SUBBA RAO

Advocate for the
petitioner (s)

Versus

Respondent.

SHRI N.R.DEVARAJ

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR.B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

B.N.J.
(B.N.J.)

(61)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT : HYDERABAD

O.A.Nos.680/89; 933/89; 952/89; 976/89; 987/89; 993/89;
2/90; 88/90; and 144/90.

DATE OF DECISION: 25-7-90

BETWEEN:-

1.M.Nagi Reddy; 2.A.Rajendra Prasad; 3.S.David Raju;
4.D.Durga Prasad; 5.V.S.V.Subba Rao; 6.B.V.Subba Rao;
7.S.S.Sarath; 8.T.Venkateswara Rao and 9.M.V.N.Appa Rao.

	..	Applicants in O.A.680 of 1989.
1.N.Chandra Sekhar	..	Applicant (O.A.933/89)
1.Y.Pradeep 2.G.Satyanarayana	..	Applicants (O.A.952/89)
1.T.Sambaiah 2.U.Solaman Raju	..	Applicants (O.A.976/89)
1.G.Murali Mohan	..	Applicant (O.A.987/89)
1.M.Chinthaliah	..	Applicant (O.A.993/89)
1.P.Venkateswara Rao 2.G.Venkateswara Rao	..	Applicants (O.A.2/90)
1.L.Sobhana Babu	..	Applicant (O.A.88/90)
1.M.L.Narayana	..	Applicant (O.A.144/90)

AND

1.The General Manager, South Central Railway, Rail Nilayam, Secunderabad.	
2.The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.	
3.The Divisional Railway Manager, South Central Railway, Vijayawada.	
4.The Chief Project Manager, South Central Railway, Railway Electrification, Vijayawada.	
5.The Divisional Electrical Engineer (Traction), South Central Railway, Vijayawada.	
..	Respondents in all the above 9 O.As.

APPEARANCE:

For the Applicants in all 9 O.As. : Shri G.V.Subba Rao, Advocate.
For the Applicants in O.A.952 & 993/89 : Shri V.Venkateswara Rao, Advocate
For the Respondents : Shri N.R.Devaraj, Standing
Counsel for Railways.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.
THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

O.A.Nos.680 of 1989, 933 of 1989, 952 of 1989, 976 of 1989, 987 of 1989, 993 of 1989, 2 of 1990, and 88 of 1990, ^{and 144 of 1990}

(Judgment of the Bench Delivered by Hon'ble Shri D.Surya Rao, Member (Judicial).)

1. All these (8) applications raise common questions of fact and law and can be disposed of together. The contention of the applicants in these cases is that the Divisional Railway Manager, South Central Railway, Vijayawada Division issued a notification No.B/P.564/Diesel/Vol.1/II/BZA, dt.15-7-1987 calling for applications for filling up ^{the} posts of Diesel/Traction Rolling Staff/ Electrical khalasis in the scale of Rs.750--940. The Educational Qualifications prescribed were a pass in I.T.I. from a recognized Institute with VIII standard. The age limit was 28 years with a relaxation of 5 years for SCs. Casual Labour in the Railways were also eligible to apply subject to certain age relaxation. The number of vacancies notified were approximately 300 with reservations for SCs, STs and Ex-Servicemen. After conducting of a written test and a viva voce examination, the Divisional Railway Manager by his letter No.B/P 504/III/Diesel/Vol.II, dt.8.1.1988 published a panel comprising 300 names which was posted on the notice board. The names of the applicants in O.A.680 of 1989 were at serial Nos.102, 96, 90, 77, 95, 86, 91, 93 and 83, the applicant in O.A.933 of 1989 at Sl.No.76, the applicants in O.A.952 of 1989 at serial Nos.85 and 97, the applicants in O.A.976 of 1989 at Srl.Nos.94 and 118, the applicant in O.A.No.987 ^{of 1989} at Sl.No.88, the applicant in O.A.No.993/89 at Sl.No.121, the applicants in O.A.2/90 at Sl.No.79 and 92, ^{and the applicant in O.A.144 of 1990 at Sl.No.14} and the applicant in O.A.88/90 at Sl.No.74. It is their case that there was no time limit prescribed for the duration of the panel, that the Railways are bound by the principle of Promissory Estoppel and were liable to absorb all the 300 persons selected and included in the panel. It is

alleged that out of the 300 persons selected, 160 were straightaway appointed as Electrical Khalasis, that between January 1988 and September 1988 piecemeal 98 khalasis were appointed leaving out 42 khalasis inclusive of the applicants without jobs. It is further alleged that the respondents are seeking to fill up 42 vacancies from among Casual Labour, who do not possess the I.T.I. qualifications ignoring the applicants and other panel candidates despite the latter possessing better qualifications. It is alleged that in order to select these casual labour, the 3rd respondent notified that a screening test would be held on 14.9.1989 and issued a letter No.E-252/VBRE/3080 alerting 69 casual labour. The applicants thereupon have filed this application to declare that their non-appointment is arbitrary and violative of their rights guaranteed under Articles 14 and 16 of the Constitution and to declare the letter dt.14.9.1989 issued by the 3rd respondent as arbitrary and illegal. At the time of admission, the applicants sought stay of the screening process. This Tribunal passed interim orders on 7.9.1989 in O.A.680 of 1989 that the process of selection may go on but that the results should not be announced during the pendency of the O.A.

2. On behalf of the Respondents (Railways) a counter affidavit has been filed in O.A.680 of 1989. This counter was adopted as the counters in the other O.As. also. The averments made therein are that in the notification dt.15-7-1987 calling for applications it was stated that vacancies would be approximately 300, that the figure was arrived at on the basis of existing and anticipated vacancies, that the currency of the panel dated 8-1-1988 expired on 7-1-1989, that according to the Railway Board's letter No.E(NE)II-84/RC-2/21, dt.16-11-1984 the life of a panel for Direct Recruitment ^{to} Gr.D posts from

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the open market should normally be one year extendable by one more year with the approval of the Chief Personnel Officer, that by 7-1-1979 i.e. date of expiry of the panel dt.8-1-1988, there were no vacancies in which the 42 candidates (including 9 SCs) could be appointed and that the reason for non-availability of vacancies which were previously anticipated was that Rolling Stock (Electrical Locomotives) which were due to be received were not received in Vijayawada Division. It is stated that the third respondent had requested the second respondent to extend the panel but the latter declined to do so in view of the availability of surplus trained casual labour in the Railway Engineering Projects. It is stated that the screening was proposed from among casual labours with I.T.I. qualifications. It is denied that any promise was made out to the applicants that they would be given appointments. ^{It is also contended by} that mere inclusion in the panel does not give the applicants an indefeasible right to appointment, ^{if} that/for any administrative reasons vacancies did not arise as anticipated within the prescribed period of one year viz., period of validity of the panel, the said panel lapses and the applicants cannot claim any right to appointment. It is contended that selection and appointment of eligible casual labour is neither arbitrary nor discriminatory and that the application is liable to be dismissed.

3. We have heard the arguments of Sri G.V.Subba Rao, Counsel for the applicant, and Sri N.R.Devraj, Additional Standing Counsel for the Railways, on behalf of the respondents.

4. The first contention raised by Sri Subba Rao is that by advertising and notifying that 300 vacancies would be filled up and by publishing a panel or select list of 300 persons, a promise of appointment was given to the selected candidates

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and that the action of the respondents in not filling up the vacancies is opposed to the Principle of Promissory Estoppel. On behalf of the respondents Sri Devraj contends that no promise either express or implied was ever held out to the applicants and as such the Principle of Promissory Estoppel will not apply. It would be necessary to look into the notification dated 15-7-1987 calling for applications to determine this issue. No express promise is made herein that the selected candidates will be given appointment. The notification while calling for applications for the posts of khalasis states that the number of vacancies are approximately 300 and that 33, 15 and 60 are reserved for SCs, STs and Ex-Servicemen respectively. Since the respondents ^{have not} ~~were~~ neither spelt out the exact number of vacancies and have merely stated that the vacancies are approximately 300, it cannot even be said that an implied promise has been made that 300 persons would be appointed. Again ⁱⁿ ~~is~~ the panel dated 8-1-1988 it is not an offer of appointment nor does it state that all the selected candidates will be given appointments. Since there is no offer of appointment made to the applicants, since no guarantee or promise was made in the notification calling for vacancies, it is clear that no express promise of appointment was made to the applicants. Further inclusion in the panel of selected candidates cannot be deemed to be an implied promise of appointment. The Doctrine of Promissory Estoppel has, therefore, no application to the facts of the present case. Sri Subba Rao has relied on the decision of the Principal Bench in 1987(1) ATC 503 (Ishwar Singh Khatri vs. Union of India) wherein the Doctrine of Promissory Estoppel was invoked and relief granted. The facts of that case are different from the facts herein. That was a case wherein

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654 vacancies of trained graduate teachers were notified, the Delhi administration prepared panels aggregating 1492 names and published the panels indicating that appointments would be made till the last candidate^{later &} was absorbed, but the administration signified its willingness to appoint candidates from the panels only to the extent of the notified vacancies viz., 654. The applicants before the Principal Bench pleaded that when publishing the panel, it was indicated that the appointments would be made from the panel till the last candidate was absorbed and that this constituted a promise which was in the nature of a promissory estoppel. The plea of the applicants was accepted by the Principal Bench. In doing so, the Principal Bench relied upon the admission made in the reply to para 4(h) of the applicants' affidavit admitting that in the select list, there was a specific statement that "appointments will be made from select list till the last candidate is appointed". Thus the Principal Bench decision in Ishwar Singh Khatri's case ^B ~~that~~ the plea of promissory estoppel was accepted since the appointing authority had made a specific representation or promise that appointments will be made till the last candidate is appointed. In the instant case before us no such representation or promise has been held out to the applicants or others in the panel. It follows that there was no promise and the decision in Ishwar Singh Khatri's case has no application to the present case. Shri Subba Rao also relies on the decision of the Principal Bench in 1990(1) ATR(CAT)97 (Lalita Rani vs. Union of India). The facts in that case are totally different from the facts in the present case. That was not a case of preparation of a panel or one wherein a promise was held out to the panel candidates that they would be appointed. The doctrine of Promissory Estoppel extended

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to the applicants in that case cannot be extended to the applicants herein. We accordingly hold that the letter dated 8-1-1988 has not extended a promise or assurance that all the select list candidates will be given appointments. Even in the advertisement dated 15-7-1987, no such promise is made. The contention of the applicants that a promise was held out express or implied is wholly untenable and is accordingly rejected.

5. The next contention raised by Sri Subba Rao, Counsel for the Applicant, is that under the rules there is no time limit prescribed for the validity of a panel and that till the panel is exhausted i.e., ^{all} all the persons included in the panel are appointed, it is not open to the Respondents (Railways) to resort to fresh selections for the posts of Khalasis from among the Casual Labour when the panel dated 8-1-1988 is yet not exhausted. He contends that according to Ministry of Home Affairs, Department of Personnel and Administrative Reforms O.M.No.22011/1/2/79-Estt (D), dated 8-2-1982 it has been made clear that once a person has been included in a select or merit list based upon the declared number of vacancies, the appointing authority has a responsibility to appoint him even if the number of vacancies has undergone a change after his appointment. It was also ordered therein that when selected candidates are awaiting appointment, further recruitment should be postponed till all the selected candidates are appointed or the fresh intake should be reduced by the number of candidates awaiting appointment. These instructions were made applicable to direct recruitment and ^{to} in the case of a Departmental Competitive Examination, where a list of selected candidates is announced. The Supreme Court considered the Memorandum No.22011, dated 8-2-1982 in AIR 1984 SC 1831 (Prem Prakash vs. Union of India). The Memorandum and the observations of the Supreme Court in Prem

Prakash's case were considered by the Principal Bench in ATR 1987(1) CAT 502 (Ishwar Singh Khatri's case) and it was held that while the number of vacancies notified can be considered as a reliable yardstick and parameter for determining the number of vacancies, this can by no means be considered the only yardstick and that attending circumstances and collateral factors cannot be ignored. On the facts it was held that the ^{determining of the} number of declared vacancies is ~~to be determined~~ with reference to the size of the panels prepared and not the number of vacancies notified. Thus a direction was issued to fill up the vacancies to the extent of the panel prepared i.e. even beyond the number of vacancies notified. If the Memorandum No.22011, dated 8-2-1982 is applicable to the Railways, there is no doubt that the applicants must succeed. Shri Devraj has, however, contended that this memorandum was never extended to the Railways. Sri Subba Rao has not been able to show us any order of the Railway Board extending this Ministry of Home Affairs Memorandum to the Railways. Shri Devraj on the other hand relies upon the Railway Board's letter No.E(N9) II-84/RC-2/21, dated 16-11-1984 issued after the Home Ministry's Memo dated 8-2-1982 which lays down that the currency of Group D (Class IV) panels in the case of direct recruitment from the open market should normally be one year and that in exceptional cases it can be extended by one more year. Since in the instant case it was not extended, it is contended that the validity of the panel expired on 7-1-1989.

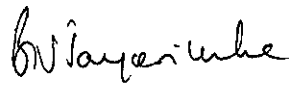
6. It has not been established or shown to us that the Memorandum No.22011, dated 8-2-1982 is extended to the Railways. It, therefore, follows that it cannot be made applicable to the instant case. In any event the Railway Board letter dated 16-11-1984 fixed a time limit for the

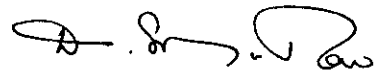
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currency of a panel relating to direct recruitment of Group-D employees viz., one year and extendable in special cases by one more year. Thus the Railway Board's instruction is contra to the Ministry of Home Affairs Memo No.22011, dated 8-2-1982 which lays down no time limit ~~for variety of reasons~~. When there is such a contradiction, the Railway Board's letter or instructions must prevail. It has been held by the Supreme Court in AIR 1969 SC 118 (B.S.Vadera and another vs. Union of India) that the Railway Establishment Code has been issued by the President in exercise of his powers under proviso to Article 309 and that under Rule 157 of the said Code, the President has directed the Railway Board to make rules of a general application to non-gazetted Railway servants under their control. It was further held that the rules which are embodied in the schemes framed by the Railway Board are within the powers conferred under rule 157 and in the absence of any Act, having been passed by the appropriate legislature, on the said matter, the rules framed by the Railway Board will have full effect. The letter dated 16.11.1984 is of a general nature, it applies to non-gazetted servants viz., Group-D employees and as such it has the full force of ^a the rule framed under Rule 157 of Indian Railway Establishment Code. Consequently, the Railway Board's letter dated 16.11.1984 would prevail as against Memo No.22011, dated 8-2-1982 issued by the Ministry of Home Affairs. Applying the Railway Board's letter dated 16-11-1984. It follows that the panel dated 8-1-1988 has expired by 7-1-1989. Once the panel has expired, it will not be open to any person included therein to claim a right to appointment to vacancies ^{Q - The letter B/P Mech. SGA D/13-S-89 from Dr. M. Vijayawada referred on by the applicant shows that 50 vacancies had arisen after 7.1.1989.} which have arisen after that date. The contention of the applicants that they are entitled to appointment even after the expiry of currency of the panel, in view of their having

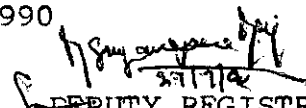
been included in the panel, cannot be accepted and it is accordingly rejected.

For the reasons given by us, the claim put forth on behalf of the applicants is rejected and the application ^{are} (is) dismissed. In the circumstances parties are directed to bear their own costs.


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

Dated: 25th July, 1990


DEPUTY REGISTRAR (JUDL)

nsr
To

1. The General Manager, S.C. Railway, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C. Railway, Railnilayam, Secunderabad.
3. The Divisional Railway Manager, S.C. Railway, vijayawada.
4. The Chief Project Manager, S.C. Railway, Railway Electrification, vijayawada.
5. The Divisional Electrical Engineer (Traction), S.C. Railway, vijayawada.
- (Respondents in all 9 O.As).
6. 9 copies to Mr. G.V. Subba Rao, Advocate.
1-1-230/33, Jyoti Bhavan, Chikkadapally, Hyderabad - 20.
2 copies to Mr. Vivekananda Rao, Advocate
7. 9 copies to Mr. N.R. Devraj, SC for Rlys, CAT. Hyd. Bench.

