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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 8-9-95

OA No.408/94

Sugan Chand s/o Shri Navrattan Koli, Diesel Mechanic Grade-I (POH), Loco,  
Western Railway, Ajmer.

...APPLICANT.

VERSUS

Union of India and others

... RESPONDENTS.

CORAM:

HON'BLE MR. O.P. SHAFMA, MEMBER (A)

HON'BLE MR. RATAN PRAKASH, MEMBER (J)

For the Applicant ... Mr. S.K. Jain

For the Respondents ... Mr. S.S. Hasan

O R D E R

PER HON'BLE MR. O.P. SHAFMA, MEMBER (A)

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri Sugan Chand has prayed that order dated 13.8.94 (Ann.A-1), by which the name of the applicant was deleted from the panel of Apprentice Mechanics (Diesel Shop) against 25% quota for promotion, may be quashed and the applicant may be allowed to be tested for the retention test and thereafter be posted as Chargeman-B scale Rs.1400-2300 as if the impugned order dated 13.8.94 had not been passed. He has further prayed that the applicant may be declared to have been promoted on the post of Chargeman-B pay scale of Rs.1400-2300 on regular basis.

2. The case of the applicant is that vide notification Annexure A-2 dated 16.2.87 applications were invited for appointment of Apprentice Mechanics against 25% promotion quota. The applicant applied for this selection. Annexure A-3 is the programme of written examination, which was to be held in September, 1987. This Annexure also contains the names of eligible persons. The applicant's name figures at Sl.No.7 of the list of Diesel Mechanics at page 28 of the paper book. The applicant was declared successful in the written test and vide Annexure A-4 dated 1.2.89 he was called for interview. In the letter calling for interview it was stated that the candidates who had been called for interview from amongst the general candidates were those who had secured 30% marks in the written test. It appears that the applicant could not find place in the select panel on the basis of the result of the test. Vide Annexure A-5 dated 15.11.89 the applicant was included in the select panel in place of one Shri Prabhu Dayal and was sent for training. Vide Annexure A-6 dated 19.6.92 it was stated that the applicant had been sent for two years' training as

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Apprentice Mechanic, and that his retention test had not been held on account of some enquiry being conducted by the Railway Board and the matter would be considered only thereafter. The applicant was ordered to continue to work on his previous post. The applicant made representations in the matter but no reply was received. The matter was also raised in a PIM Meeting (Annexure A-7) dated 1/2.6.94. Finally, order Annexure A-1 dated 13.8.94 was passed by respondent No.2 i.e. Deputy Mechanical Engineer (Loco), Western Railway, Ajmer, deleting the name of the applicant from the panel letter dated 15.11.89. The applicant has assailed the deletion of his name on the ground that since he had been shown in the panel letter and in consequence thereof had been promoted as Chargeman-B scale Rs.1400-2300, he had acquired a right to the above post and, therefore, his deletion from the panel is in violation of the principles of natural justice as this has been done without giving him any show-cause notice. The order has also been passed by the respondents in contravention of letter dated 5.4.73 (Ann.A-8 filed with the rejoinder to the respondents' reply) regarding the time limit for cancellation of the panel. Since a panel is current for a period of two years, as per Rule 220 of the Indian Railway Establishment Manual, Vol-I, 1989 Edition, the panel was current upto 15.11.91 and, therefore, it can be cancelled on that date and not thereafter. The ground of the respondent that the applicant had not secured the minimum marks in the written examination, is untenable. The respondents are now estopped from acting in the manner they have done, after having included the applicant in the select panel and sent him for training.

3. The respondents in their reply have stated that the applicant was not considered for the retention test (on conclusion of training) because of pendency of some enquiry. They have, however, further stated that for inclusion in the select panel for being sent on training as Apprentice Mechanic only those who secure 60% marks or above in the written test could be called for viva-voce. Since the applicant had not secured 60% marks in the written examination, it was decided to delete his name as also of some other employees from the panel and the Railway Board had approved this proposal vide order dated 5.8.94, referred to in Annexure A-1. They have further stated that the life of the panel would be for two years from the date of approval by the competent authority or till it is exhausted, whichever is earlier. The panel had not been exhausted before the expiry of two years. The currency of the panel was upto 15.11.91 and, therefore, this panel had ceased to exist automatically. As per para 3 of the order dated 13.8.94 (Ann.A-1), 15 days' time was allowed to the applicant to make any representation against the deletion of his name from the panel, if he was aggrieved by such action. The applicant had not made any representation against the said deletion. Since the result of the examination of the candidates like the applicant was ab-initio void on account of being in

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contravention of the Board's instructions, such a mistake could have been rectified by revoking the earlier order declaring the applicant as qualified.

4. The applicant has also filed rejoinder, which is on record.

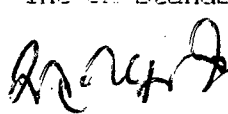
5. During the arguments, the learned counsel for the applicant stated that after the applicant had been included in the panel, he had undergone the training of two years as well. Now, after he had completed the training, his name was sought to be deleted from the select panel. According to him, the respondents were not competent to delete the name of the applicant from the select panel on the ground of promissory estoppel. Even otherwise the panel could not have been cancelled after the expiry of its currency and in case of non selection posts, after expiry of six months from the date of declaration of the results. This was the selection post and the panel expired on 15.11.91, whereas the order cancelling the panel in so far as the applicant is concerned, is dated 13.8.94. Therefore, the respondents were not justified in deleting the name of the applicant from the panel.

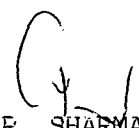
6. The learned counsel for the respondents drew our attention to provisions of Rule 219 of Indian Railway Establishment Manual, Vol.I, 1989 Edition, which provide that a candidate must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. The table given in the preceding rule showed that maximum marks in professional ability were 50, whereas the applicant secured only 30% marks. A candidate had to secure 60% marks in the professional ability i.e. written examination. Since the applicant had not secured the requisite minimum marks, as prescribed in the above rule, he had been wrongly called for interview and his name had been wrongly included in the select panel. Therefore, his name had been rightly excluded from the panel.

7. We have heard the learned counsel for the parties and have gone through the material on record. It is possible that the applicant did not secure the minimum qualifying marks in the written examination for being called for the interview. However, the subsequent developments cannot be ignored. After the applicant had appeared in the selection test and <sup>been</sup> informed that he had passed, he had appeared in the interview. Although he was not declared successful for inclusion in the select panel by the respondents yet subsequently the applicant's name was included in the select panel in place of another candidate. Thereafter, the applicant was sent for training, which he underwent for a period of two years. Now to go back to the situation, prior to the stage of training, inclusion of the name in interview and holding of the interview would amount to putting the clock back. The applicant, notwithstanding the fact that he may not

have secured the minimum qualifying marks in the written examination for inclusion in the select panel of Apprentice Mechanic, had been sent for training by the respondents and had undergone the said training for a period of two years. We are of the view that if there was any deficiency in his qualification for being sent for training as Apprentice Mechanic, this will be cured by the applicant's training, if completed successfully. We do not consider it necessary to give a finding in the circumstances of the present case whether doctrine of estoppel would operate in this case but we hold that since the applicant was sent for training and has completed it, it is only fair that the retention test i.e. test to be conducted to find out whether the applicant had successfully completed the training, should be held now and if the applicant is found to have passed the test securing the prescribed percentage of marks, he should be granted due benefits of such passing of the test as may be available to him in accordance with the rules. For this purpose, therefore, we quash Annexure A-1 dated 13.8.94 in so far as it deletes the name of the applicant from the panel.

8. The OA stands disposed of accordingly with no order as to costs.

  
(PATAN PRAKASH)  
MEMBER (J)

  
(O.P. SHARMA)  
MEMBER (A)

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