

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR
JAIPUR JAIPUR

O.A. No. 181/1997
~~T.A. No.~~

199.

DATE OF DECISION 17/9/2002

J.P. Pareek and Ors.

Petitioner s

Mr. P.V. Calla

Advocate for the Petitioner (s)

Versus

The Union of India and Ors.

Respondents

Mr. U.D. Sharma


Advocate for the Respondent (s)

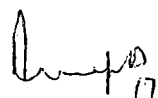
CORAM :

The Hon'ble Mr. A.P. NAGRATH, ADMINISTRATIVE TRIBUNAL

The Hon'ble Mr. J.K. KAUSHIK, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter or not ? ~~no~~ yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.


(J.K.KAUSHIK)
Judl. Member


(A.P. NAGRATH)
Adm. Member

JAIPUR BENCH RESERVED CASE

Judgement is dictated by
H'ble AM-II and checked
~~up to page No. 7.~~

Record in the case is also
tagged.

Submitted for consideration and
corrections Sir.

HON'BLE J.M.

I agree
2/7
Submitted to kind consideration Sir. *Hke*
AM

Central Administrative Tribunal
Jaipur Bench, Jaipur

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Date of Order : 17/9/2002

O.A. No. 181/1997

1. J.P. Pareek S/o Shri H.P. Pareek, aged 52 years, R/o Railway Quarter NO. 1372-A, Gulab Badi Railway Colony, Ajmer.
2. K.K. Srivastava S/o Shri K.G. Srivastava, aged 51 years, R/o Krishan Kunj, Outside Delhi Gate, Ajmer.
3. Prem Chand S/o Shri Parsa Ram aged 54 years, R/o Gali No. 15, Tanaji Nagar, Bhajan Ganj, Ajmer.

All the applicants are working on the post of Senior Data Operator (Senior D.E.C.), Scale Rs. 1400-2300 at Ajmer in Compilation Office.

..... Applicants.

Versus

1. The General Manager (E), Western Railway, Churchgate, Mumbai.
2. Senior E.D.P.M., Western Railway, Churchgate, Mumbai.
3. Statistical and Analyst officer (S&AO), Compilation Office, Western Railway, Ajmer.

..... Respondents.

...

CORAM :

Hon'ble Mr. A.P. Nagrath, Administrative Member

Hon'ble Mr. J.K. Kaushik, Judicial Member

...

Mr. P.V. Calla, counsel for the applicants.

Mr. U.D. Sharma, counsel for the respondents.

...


O R D E R

Per Mr. A.P. Nagrath :

The applicants, three in number, ~~was~~ were working as Senior Data Entry Operators in the then scale of Rs.1400-



2300 and the next promotion is, to the post of General Supervisor (Machine) in the then scale of Rs. 1600-2660. This promotion was by a positive act of selection. Such a selection was notified on 1st July, 1996 and these three applicants, along with other eligible candidates, appeared in the written test held on 27th July, 1996. The result of the written test was declared vide letter dated 18.10.1996 (Annex. A/3). This includes 22 names. The first 10 names are of such candidates who secured the prescribed qualifying marks in the written test for being called for the interview. The other 12 candidate have been declared eligible to be called for interview under the provisions of Railway Board's letter No. E (NG) I - 83 - PMI - 65 / (PNM/NFIR) dated 5th December, 1984. This letter provides that if, by adding notional marks of seniority, the candidates secured 21 marks out of 35, they will also be considered eligible to be called for interview. In this result, the applicants find their names at Sl. Nos. 7, 9 and 10 in the first part i.e. they had secured 21 marks or more out of 35 in the written test. The final panel has been declared vide letter dated 3rd January, 1997. This includes 13 names and the applicants' names do not find mention in this list. The applicants have assailed this panel dated 3rd January, 1997 (Annex.A/1) by filing this O.A. with a prayer that the respondents be directed to include their names in the said panel, if the applicants are otherwise found suitable and accord them promotion to the post of General Supervisor (Machine) from the date other candidates in this panel have been so promoted and with all the consequential benefits.




2. The main and the only ground on which this selection has been challenged by the applicants, is that the candidates who had not secured prescribed qualifying marks in the written examination, should not have been considered eligible for being called for the interview by adding notional marks of seniority for that reason that Railway Board's Circular dated 5th December, 1984 under which such a provision has been made, ^{has been} held to be ultra vires of Articles 14 and 16 of the Constitution by the Jabalpur Bench of this Tribunal sitting in the Circuit Bench at Indore, in O.A. No. 867/1989 connected with O.A. No. 64/1990 decided on 13th August, 1993. The Tribunal quashed the Railway Board's Circular dated 5th December 1984 though prospectively. The case of the applicants is that once this circular has been declared invalid by the Tribunal, the respondents had no legal right to apply the provisions of such a circular to the instant case. Because of this reason, the selection process is vitiated. According to the applicants the only correct procedure would have been to confine the eligibility for being called for interview, only to those who had secured 21 marks or more in the written examination. Thus, they seek their inclusion in the impugned panel. Their grievance has been further aggravated for the reason that out of the persons declared successful in the impugned panel, 7 candidates have been called for still further promotion to the scale of Rs. 2000-3200.

3. The very short point of controversy has arisen in this case and that is, whether the respondents acted legally by including the names of such of the candidates for being called for the interview who had failed to secure 21 marks




out of 35 in the written test just because of the marks of seniority assigned to them, though notionally under the provisions of Railway Board's letter dated 5th December, 1984, and whether the respondents are required to include the names of the applicants in the panel dated 3.1.1997.

4. The respondents in their reply have repelled the contention of the applicants that notional marks for seniority should not have been taken into account while declaring some of the candidates as eligible for being called in the interview, and have maintained that the entire selection procedure has been correctly followed. It has been asserted that the procedure as modified by the Railway Board's letter dated 5th December, 1984 was applicable to this selection process and pursuant thereto, a panel had been notified vide order dated 26th December, 1996, issued by the office of General Manager, Western Railway and order dated 3rd January, 1997, issued by the Statistical and Analyst Officer, Ajmer. Of course, the letter dated 3.1.1997 is merely a communication notifying the order dated 26th December, 1996 (which is the main order) to the persons posted at Ajmer. It has been stated in the said letter that this panel is effective from 18th December, 1996. On the main controversy relating to applicability of the instructions contained in the Railway Board's letter dated 5th December, 1984, the respondents have taken the stand that the aforesaid order passed by the Circuit Bench of the Tribunal at Indore, was applicable to the selection for the post of Inspector of Works, Grade-I, which was under challenge in that case and not for other selection posts. The respondents have also taken an objection ^{against} ^{of} ~~not~~ ~~impugning~~ ~~the~~ officials included in the panel notified vide impugned order, who were senior to the applicants and whose position is likely to be affected in case, the relief as prayed for is granted.



5. The main thrust of the arguments advanced on behalf of the applicants by the learned counsel Shri P.V. Calla was that after the Jabalpur Bench of the Tribunal had quashed the Railway Board's Circular dated 5th December, 1984 ~~as requested~~ there was no authority with the respondents to apply the provisions of the said letter to this selection. For this reason, he submitted that this selection stood vitiated to the extent of including the names of such people who were made eligible by reckoning the marks of seniority, though notionally, for this purpose. The learned counsel also referred to the judgement of Mumbai Bench of this Tribunal in O.A. No. 503 of 1997 pronounced on 10th March, 1998 to lay stress on the aspect that no marks of seniority can be allotted while evaluating the relative performance of the participants in the selection. His submission was that the judgement in this case is directly based on the law laid down by Hon'ble the Supreme Court in the case of M. Ramjyaram Versus General Manager, South Central Railway and Others reported in 1996 SCC (L&S) 890.


6. The learned counsel for the respondents Shri U.D. Sharma reiterated the stand of the respondents in their reply. Further, he strongly urged that the applicants cannot challenge the selection ~~on the ground that they were not~~ after having participated in the selection process. In the result of the written test, it had clearly been indicated that some of the officials were being called in the interview in terms of the provisions of the Railway Board's circular of 5th December, 1984. The applicants had participated in the interview after having been fully aware of this letter and they now cannot be permitted to assail the selection by challenging the said letter. In support



of his contention Shri Sharma placed reliance on the ratio of the case of Pratap Singh Versus High Court of Judicature for Rajasthan through its Registrar reported in 2002 (2) SIR 73. In that case, it was held by the Hon'ble High Court that 'the petitioner who applied for the post and participated but not selected, is estopped from challenging the selection process when he had appeared before the selection committee without any protests. The learned counsel also stated that in case the relief was granted to the applicants, it will adversely affect the selected candidates who have not been made parties to this case. According to him, this application suffers from non-joinder of necessary parties and in terms of the law laid down by Hon'ble the Supreme Court in the case of Union of India & Others Vs. Vipinchandra Hiralal Shah, reported in 1997 SCC (L&S) 41, this O.A. is not maintainable and is liable to be dismissed.

7. We have heard the learned counsel and have given our anxious consideration to the rival contentions.

8. The first question, which we are called upon to consider is, whether the action of the respondents in calling some of the candidates in the interview by reckoning the marks of seniority though notionally, was legally valid. The answer emphatically is, 'No'. A coordinate Bench of this Tribunal (Jabalpur Bench) had an occasion to examine this matter in detail and had quashed the Railway Board's Circular dated 5th December, 1984. The plea of the respondents that, that order is required to be confined only to the selection under



consideration in the O.As before that Bench, is totally without merit. The learned Tribunal was considering the validity of the order dated 5th December, 1984 in the context of the selection process in the respondent-department and the directions therein, cannot be said to be applicable or confined to the cadre of Inspector of Works, Grade-I. The order nowhere stated that the circular dated 5th December, 1984 was being held invalid only in respect of that selection. Once, the circular is held invalid by this Tribunal, it ceases to have any effect thereafter, unless, the department had taken steps to appeal ^{against} the said order and had the same over-ruled. We have also gone through the reasoning given in the said order and we find ourselves in respectful agreement that the conclusion arrived at and the decision to quash the order. Even, under the "Doctrine of Precedent" applicable to CAT, as put forth in their order by Hon'ble the Supreme Court in the case of K. Ajit Babu and others Versus Union of India and others, reported in 1997 SCC (L&S) 1520, it was held that the 'Doctrine of Precedent' is applicable to the Central Administrative Tribunal also, the relevant part of the judgement is extracted as under :


"Held: Consistency, certainty, and uniformity in the field of judicial decisions are considered to be the benefits arising out of 'Doctrine of Precedent'. The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of admission of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever, an application under Section 19 of the Administrative Tribunals Act is filed and the question involved in the



said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may, either agree with the view taken in the earlier judgement or it may dissent. If it dissents, then the matter can be referred to Larger Bench/Full Bench and place the matter before the Chairman for constituting a Larger Bench so that there may be no conflict upon two Benches. The Larger Bench, then has to consider the correctness of the earlier decision. The Larger Bench, can overrule the view taken in the earlier judgement and declare the law, which would be binding on all Benches."


9. In this back-ground, we find ourselves bound by this order apart from the fact that we also agree with the conclusions arrived at therein.

10. The reference made to Hon'ble Supreme Court's order in M. Ramjayaram and the order of Mumbai Bench of Tribunal in O.A. No. 503/97 - Sima F. Verma. The ratio of these cases are not applicable to the case before us. In such cases, the provisions of Rule 219 of Indian Railway Establishment Manual, came to be critically examined. The selection related to the post of 'Law Assistant' in both the cases and the post of Law Assistant is a general category post and does not fall in the line of avenue of promotion of any specific category. Thus, the provisions of Para 219 of Indian Railway Establishment Manual are only scrutinised with respect to their applicability to the selections for general posts. In fact, consequent to the ratio of the case decided by the Apex Court and followed by the Mumbai Bench of this Tribunal, the Railway



Board, duly implemented the same and amended the relevant provisions by issuing advance correction slips No. 46 and 66 in the year 1998. The matter before us, does not relate to selection to a general post but to a post of General Supervisor (Machine) which falls into the avenue of promotion for Senior Data Entry Operators. Ofcourse, we do find that the Railway Board issued another correction slip No. 84 in the year 1999 by which the provision of calling the candidates for interview based on the marks of seniority awarded on notional basis, has been retained. Obviously, ^{they} they have ignored the orders of Jabalpur Bench of this Tribunal relating to this matter.

11. The respondents have also made available to us the proceedings of this selection and we find that all the 22 candidates, who were held eligible for being called for the interview, including those who were called on the basis of notional marks of seniority, have attained the minimum qualifying marks both in the professional ability as also in the aggregate. The Interview Board appears to have been rather liberal and have gone to the extent of allotting 14 marks out of 15 in the interview to some such candidates who secured only 16 marks out of 35 in the written examination. We have perused the notes in the assessment-sheet very carefully which indicates minimum qualifying marks required to be secured for being called for interview, in the professional ability and in aggregate. It has been mentioned that for non-safety posts to which the category of General Supervisor (Machine) also belongs, the minimum qualifying marks required in the written test for being called for interview have been shown as 21 out of 35 for general candidates and 10 out of



35 for SC/ST candidates. In professional ability 30 marks out of 50, are required as the minimum qualifying marks for generals and 25 out of 50 marks are required for SC/ST candidates. In aggregate 60 marks out of 100 are required for general and 42.5 out of 85 marks for SC/ST candidates. There is no mention that the candidates can also be called for interview by taking into account notional marks of seniority. Obviously, in view of such specific provisions as have also been laid down in the assessment-sheet for the guidance of the selection committee, the respondents have themselves departed from these provisions and made some candidates eligible. If this criteria was followed correctly then, 10 candidates could not have been called in the interview and the selection should have been confined to the remaining 12 candidates only. This selection was for a total of 13 vacancies out of which, 10 were general, two reserved for SC and one post was for a ST candidate. There are three SC candidates including one of the applicants, Prem Chand and as per the norms applicable to SC candidates, all the three candidates are duly qualified. If, the 9 in-eligible candidates had not been called in the interview, the natural consequence would be that, all the three applicants who had secured requisite marks in the written test as also one Shri Raju Paddicala, would have been declared successful. Apart from 3 SC candidates 9 general candidates only could have been placed on the panel including all the three applicants and one Shri Raju Paddicala.

12. Having come to the conclusion that the department had followed a procedure legally not permissible ~~to the extent~~



in the light of judgement of Jabalpur Bench of this Tribunal, the next question is, whether, any relief can be granted to the applicants before us. The respondents have taken a plea that this O.A. suffers from non-joinder of necessary parties inasmuch as if the principle laid down by the Jabalpur Bench is followed then 8 of the successful candidates would stand excluded from the panel. None of them has been made party in this application.

13. In Union of India & Ors. Vs. Vipinchandra Hiralal Shah (1997 SCC (L&S) 41), it was observed by Hon'ble the High Supreme Court that there was a failure to comply with the mandatory requirement of Regulation 5 of the Regulations (Appointment by Promotion Regulations relating to IAS), but the State Civil Service Officers, who were selected in the select list prepared in December 1986 and January 1987, have not been impleaded as parties and, therefore, their appointment to the service cannot be upset. In Sukhpal Singh & Ors. Vs. Punjab State Agriculture Marketing Board & Ors. (1994 (5) SCR 619), Hon'ble the Supreme Court has held as under :-

"3. Subsequent to the cancellation of the appointment of the appellants, on a regular advertisement candidates were selected, appointments were made and posts have been filled up. Those candidates have been functioning from May 27, 1987 onwards. They are not before this Court nor are they sought to be impleaded in the High Court. Therefore, any order that may be passed by this Court would have adverse effect of unsettling their appointment without they being impleaded and without any opportunity of hearing given to them. Under those circumstances, we decline to interfere with the order of the High Court and the order of the



Market Committee cancelling the appointments of the appellants."

14. In Rajbir Singh HFS-II Versus The State of Haryana & Anr. (1996 (1) ATJ 416), the Apex Court declined to express any opinion on merits in the case for the reason that the matter relating to inter se seniority was not maintainable without impleading the necessary party.

15. The learned counsel for the respondents has raised a plea that the applicants cannot challenge the selection process after having participated in the same. In Pratap Singh Versus High Court of Judicature for Rajasthan through its Registrar (2002 (2) SIR 73), Hon'ble the High Court of Rajasthan has held as under :-

"30. The petitioner having appeared before the Selection Committee without any protest and having taken a chance, is now estopped by conduct from challenging the selection process and the selections now made. This Court is justified in refusing to grant any relief in favour of the writ petitioner....".

16. Now, we have to examine, whether, any relief can be granted to the applicants in the light of the above stated legal position. The result of the written test was declared vide letter dated 18.10.1996 (Annex.A/3) which very categorically stated that 12 candidates listed at Page No. 2, were being called by taking into account their seniority marks in terms of Railway Board's letter dated 5.12.1984. It cannot be the case of the applicants that they were not aware of this contention stated in the letter as under this very letter their own result had also been declared and they had been




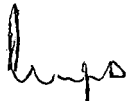
held eligible to be called for the interview. They did not raise any objection at that time though, they claimed that they made a representation on 20.2.1987 which is much after the date of the final panel announced vide impugned letter dated 3.1.1997. Having not objected to inclusion of these twelve persons in the letter dated 18.10.1996, the applicants are now estopped from taking their claim for being included in the said panel. We find, of course that the applicants have not demanded anywhere in the OA that the names of any of the candidates should be deleted. Their prayer is that their names should also be included in the said panel. This prayer has no merit as number of persons to be included in the panel cannot exceed the number of vacancies advertised. There were 13 posts and the final panel includes names of 13 persons and there is no scope for including any other name.

17. It is also true that if any relief is granted to the applicants then it will adversely affect the persons already included in the final panel. They have not been made parties to this O.A. The legal position has been well established as seen from various pronouncements cited above. It was necessary for the applicants to have impleaded all the persons who were called to appear because of notional marks of seniority as necessary parties. This has not been done, thus, the O.A. suffers with non-joinder of necessary parties and is thus, not maintainable. Even though, we have concluded that the respondents could not have applied the provisions of letter dated 5.12.1984 or declare the same invalid, we cannot grant any relief to the applicants because of non-joinder of necessary parties. We are left with no alternative but to reject this application.



18. We dismiss this O.A. on account of non-joinder of necessary parties . The candidates included in the final panel have enjoyed their promotion for all these years and as per the applicants' own version, some of them have been promoted even to the next higher grades. In this back-ground, we refrain from giving any opportunity to the applicants to agitate the matter afresh by impleading necessary parties and in the circumstances, there shall be no orders as to costs.


(J.K. Kaushik)
Judl. Member


(A.P. Nagrath)
Adm. Member

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mehta