

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/01227/2016

Date of CAV : 20.08.2018
Date of Order : 04-09-2018

Between :

N. Narsing Rao S/o N. Satyanarayana
Aged about 34 years, Occ. Helper-I,
South Central Railway, Carriage Work Shop,
Lallaguda, R/o Hyderabad.Applicant

AND

1. Union of India Rep by the Secretary,
Railway Board, Sanchalan Bhavan,
New Delhi.
2. South Central Railways Rep by its General Manager,
Sanchalan Bhavan, Secunderabad.
3. The Chief Personnel Officer,
South Central Railways,
Sanchalan Bhavan, Secunderabad.
4. The Workshop Personnel Officer,
South Central Railways, Office of the Chief
Workshop, Lallaguda, Secunderabad. ...Respondents

Counsel for the Applicant: Mr. Siva

Counsel for the Respondents : Mr.N.Srinivas Rao, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A.T.Act, 1985, seeking
the following relief :-

“ Hence, it is prayed that this Hon’ble Tribunal in the interests of justice be pleased to

- i. Call for all the relevant and connected records relating to the Memorandum No.SCR/P.LGDS/531/LDCE(Elec)/Tech-III, dated 18.7.2016 of the 4th Respondent and quash or set aside the same holding it as arbitrary, illegal, violative of principles of natural justice, and Articles 14 and 16 of the Constitution of India ;
- ii. Consequently, direct the Respondents to take the panel prepared and announced vide Memorandum SCR/P.LGDS/531/LDCE(Elect.)/Tech-III, dated 11.7.2016 its logical conclusion and appoint the Applicant as Skilled Artisan-III Training Lighting Category together with all consequential benefits like seniority and arrears of pay and allowances that flow from out quashing the impugned order and grant of the direction prayed for herein ;
- iii. Declare that the Applicant is entitled to exemplary costs and direct its payment from the personal funds of the authority(s) who are responsible for having thrust this unwarranted *lis* on the Applicant

and pass such other and further order or orders as are deemed fit and proper by this Hon’ble Tribunal under the circumstances of the case.”

2. The brief facts necessary for considering the OA are as follows :-

The applicant, after completion of SSC, joined the Industrial Training Institute and got the necessary training as a Diesel Mechanic. Thereafter, after undergoing the selection process, he was recruited as a Sub-Khalasi in South Central Railway and joined in Vijayawada Division on 08.11.2004. Further, the applicant earned promotion on 20.09.2013 and working as Helper-I as on date.

3. In response to the notification dated 13.08.2015, the applicant applied and sought for consideration in the Train Lighting Cadre under 25% quota meant for LDCE quota. Though a written test was held on 25.5.2016 and 50 candidates were shortlisted, the test was rescheduled on several occasions. Finally, as per the proceedings dated 09.07.2016, the applicant had cleared the examination and obtained 65 marks. The applicant was empanelled for the Train Lighting Category and the said panel was prepared as per instructions under the Serial Circular Nos.95/2009 and 15/2014.

4. Surprisingly the 4th Respondent, vide proceedings dated 18.07.2016 cancelled the panel issued vide letter dated 11.07.2016. Hence this application.

5. The Respondents have filed reply statement stating that the feeder category for appearing by the selection of Technician or Technician-III is employees who are in Helper category i.e., Grade Pay Rs.1800/-. However Electrical Department was maintaining separate seniority for Helpers viz., Helper-I and Helper-II which was maintained prior to VI Pay Commission. In terms of VI Pay Commission, Railway Board letter No. PC-VI/2008/1/3/1, dated 29.10.2008 circulated by CPO/SC as Serial Circular No.155/2008, the category of Helper-I and Helper-II is merged into single category of Helpers. But the Electrical Department have continued to maintain separate seniority of Helper-I and Helper-II. In as much as the Helpers irrespective of whether Helper-I or Helper-II are eligible for appearing for the selection as per

Corrigendum No. SCR/P.LGDS/5331/LDCE/TECH-III/ELEC, dated 24.08.2015.

Based on the above conditions selection was conducted and result was published purely based on merit of the employee in the field of selection.

6. Though a corrigendum was issued regarding eligibility of Helper-I, Helper-II some of the employees have raised the objection that the last para of notification which states that “a separate tests will be conducted for each cadre for which Helper in respective cadre will only be eligible for that particular cadre only. However, Helper-II will be considered only when Helper-I in their respective cadre do not qualify and are not available.” This para has led to confusion among the employees regarding their eligibility. Forecasting a litigation regarding the eligibility it was decided by competent authority to cancel the selection and hold afresh. This was notified vide memorandum dated 18.07.2016 duly merging both Helper-I and Helper-II into a single seniority. The memorandum dated 18.07.2016 indicated the reason for which the Administration proposes to cancel the selection.

7. The Respondents also state that some of the Helpers who have volunteered for this selection have also volunteered for General Departmental Competitive Examination slated to held between 29.05.2016 to 31.05.2016 and the selection was finalized within one year after issue of Notification. The Respondents further state that the orders for Restructuring of cadres of Artisan staff effective from 01.09.2016 have been issued by Railway Board vide Lr. No.RBE No.116/2016 circulated by CPO/SC as Serial Circular No.105/2016, dated 03.10.2016 thereby the cancellation of

the panel very much preceded the Railway Board's Orders for restructuring which aspect cannot be visualized nor is a reason attributable for cancelling the selection. In view of these submissions, the Respondents pray for dismissing the OA.

8. We have heard Mr. Siva, learned counsel for the applicant and Mr.N. Srinivasa Rao, learned Standing Counsel for Respondent Railways, perused the material placed before us.

9. The Hon'ble Apex Court in the case of Lt.Cdr.M. Ramesh Vs. Union of India & Ors [2018 SCC Online SC 393], has held as follows :-

“14. The first issue that arises is whether the petitioners have any vested right to claim that the result must be declare and if the petitioners are selected, they should be appointed. This Court in Jai Singh Dalal v. State of Haryana held that merely because the Government had sent a requisition to the UPSC to select the candidates for appointments, did not create any vested right in the candidate called for the interview to be appointed. It was also held that the authority which has the power to specify the method of recruitment must be deemed to have the power to revise and substitute the same. The Court, however, also laid down that at best the Government may be required to justify its action on the touchstone of Article 14 of the Constitution. This view has been followed in a large number of cases. In Vijay Kumar Mishra v. High Court of Judicature at Patna, this Court held that there is a distinction between selection and appointment. It was held that a person, who is successful in the selection process, does not acquire any right to be appointed automatically. Such a person has no indefeasible right of appointment.

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16. Having held so, we must also note that the law is well settled that even though the candidates may not have a vested right of appointment and the State is not under any duty or obligation to fill up the vacancies, the State has to act fairly and it cannot act in an arbitrary manner. The decision, not to fill up the vacancies pursuant to the selection process, must be taken bonafide and for justifiable and appropriate reasons. In this regard, we may make reference to the case of Shankarsan Dash v. Union of India.”

The recruitment process was undertaken as per the Rules of Railway Recruitment Board. Therefore the Railway Authorities including the General Manager were bound to follow the said Rules as per the principles of Article 12 of the Constitution but by the action of cancellation of panel in question, the 4th Respondent tried to circumvent the Rules at the behest of some other employees, who were not eligible and therefore had no scope to participate in the earlier selection process. The attempt made by the 4th Respondent in cancelling the panel cannot be justified, when he has taken the steps as per the impugned order dated 18.07.2016.

10. It is apparent that the panel, which published vide memorandum dated 18.07.2016, was cancelled on the grounds, which were not at all relevant to the issue and was not permissible under the law. Just because some workers working as Helpers Gr. II were not considered cannot be a valid ground for cancellation of the panel in question after lapse of about one and half years of the notification.

11. In the present case the notification to fill up the vacancies was published on 13.08.2015. The Limited Departmental Competitive Examination ultimately held on 10.06.2016. In the representation dated 02.09.2015 of S. C. Railway Mazdoor Union, it has been mentioned below : -

- “ 1. Most of the above employees had completed more than 15 years of service in the same grade without any promotion.
- 2. Because of surrendering of posts in restructuring and by outsourcing of post activity of AC coaches, such as RMPU units etc. Due to which there is no future prospects for promotions.

3. Some of the above staff are due for Superannuation without having any single promotion.”

Thus by the said letter the Union wanted that some of the employees who could not participate in the LDCE would get scope for their promotion and therefore the scope of the examination should be broadened. Similarly another representation dated 01.09.2015 was also submitted by the S. C. Railway employees Sangh. The posts were sought to be filled up by issuing the corrigendum dated 24.08.2015 in continuation of earlier letter dated 13.08.2015. Thirty six other employees also submitted the representation to the authorities on 04.09.2015 praying for cancellation of 25% LDCE quota in Electrical Department so that they could get service benefit. Therefore the plea taken by the Respondents in their reply at page-3 that the selection was cancelled for administrative purpose is not supported by the materials on record. It has also been mentioned in their reply that the issue of corrigendum lead to confusion regarding the eligibility and therefore the Competent Authority decided to cancel the selection. On the contrary, the material on record reveal that there was no such confusion among the staff but the authorities, at the behest of some of the Unions wanted to stall the selection process and for extraneous reasons cancelled the same at a belated stage after the panel was prepared. The point regarding restructuring of certain Group-C cadres was taken up by the Railway Authorities on 30.09.2016 and was communicated vide Sl. Circular dated 03.10.2016 and by that time the selection panel was already cancelled by order dated 18.07.2016.

12. It has been further mentioned in the counter that forecasting

litigation regarding the eligibility, it was decided to cancel the selection the selection and hold afresh. In fact by cancelling the panel in question, the respondents gave rise to this litigation in question, since they wanted to accommodate other employees for the purpose of selection to the posts in question and the same is not a bonafide decision as seen from the record. Besides that, the grounds as mentioned in Annexure-VII (page-17 to OA) goes contrary to the material on record. The material on record reveals that the authorities were under pressure by some Union and some group of employees for cancellation of the panel so that their interest could be protected in future. Once the selection process had started, it should have taken into its logical conclusion and in the absence of any guidelines issued by Railway Board, the subordinate authority have no scope or authority to cancel the panel in question for the purpose of accommodating some other categories and grades. The authority who has passed the impugned order vide Annexure-VII to OA could not have foreseen the subsequent letter issued by the Railway Board for restructuring of certain Group-C cadre and Artisan Staff. Therefore the Respondents also cannot fall back on the said letter dated 30.09.2016 in respect of their stand that the panel was cancelled for administrative reasons. Hence, even though the Rules regarding the process of selection have not been changed by the Railway Board, the 4th Respondent has tried to circumvent the said Rules in order to accommodate some other persons. Even if the Rules would have been changed after the process of selection had started, still then the process of selection should have continued on the basis of the existing Rules as held by the Hon'ble Supreme Court in the case of Md. Raisul Islam and Ors Vs.

Gokul Mohan Hazarika and Ors [2010 (6) SCALE 643]. The action in cancelling the panel in question was not within the competency and power of the concerned authority and is a colourable exercise of the same.

13. It is a settled position of law that a candidate whose claim find place in the selection panel has no vested right for appointment to the post and the said authority is not under any duty or obligation to fill up the vacancy but the authority has to act fairly and it cannot act in an arbitrary manner. The decision not to fill up the vacancies and to select the selection panel could have been taken by the Respondents bona fide and for justifiable and for appropriate reasons, as held by the Hon'ble Supreme Court in the Lt. Cdr.M. Ramesh Vs. Union of India & Ors [2018 SCC Online SC 393] (supra).

14. Thus the illegal action of the concerned authority in issuing the impugned order at Annexure VII of the OA amounts to attempt to circumvent the Rule as made by the 1st Respondent. The mere fact that the applicant had again applied for the same post in response to the 2nd advertisement cannot be a bar in seeking the above mentioned relief.

15. Thus, in the circumstances of the case, this Tribunal is of the view that the 4th Respondent has not acted bona fide and had taken the grounds which were not relevant, while passing impugned order. Therefore this Tribunal has no hesitation to set aside the impugned order. It is also brought to the notice of the Tribunal that the posts have not yet been filled up. Therefore the authorities should have given the promotion to the

candidates who were in the panel subject to availability of the posts, as per the norms and Rules.

16. In view of the circumstances, this Tribunal find that Respondents were not justified in cancelling the select panel vide impugned order at Annexure-VII to OA. Therefore the impugned order is quashed. The Respondents are directed to take steps to fill up the posts in question as per the empanelled list dated 11.07.2016 in accordance with law within a period of three months from the date of receipt of a copy of this order.

17. Accordingly the OA is allowed to the extent indicated above with no order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : 4th September, 2018.

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